



MEMORANDUM

TO: Parks and Recreation Board Members

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 19, 1992

SUBJECT: Request from Delwood Optimist Club

The Delwood Optimist Club has requested permission from the Parks Board to construct two (2) enclosed batting cages at their facility located in Bartholomew Park. Parks and Recreation Department staff have reviewed the plans and supports the proposal for construction.

The Delwood Optimist Club will pay for and maintain the batting cages.

Manuel A. Mollinedo, Director
Parks and Recreation Department

hand delivered

Mr. Manuel A. Mollinedo
Parks and Recreation Dept.
P.O. Box 1033
78767

Dear Mr. Mollinedo:

Delwood Northeast Optimist Club has been in existence since June, 1956. Our non-profit organization has operated out of our clubhouse at Bartholomew Park. Since our inception, Delwood Northeast Optimist Club has raised funds for and built four baseball fields for the purpose of developing a youth league baseball program for the N.E. Austin community. Our baseball program has thrived ever since. Delwood N.E. Optimist caters to nearly five hundred area kids each year. Much of our success must be credited to the City of Austin for providing us with some of the best park facilities in the city.

Delwood N.E. Optimist Club would now like to extend the quality of our baseball program by proposing to build two batting cages for the use by the coaches and players in the Delwood N.E. Optimist baseball program.

Enclosed with this letter is our proposal for two high-quality batting cages to be paid for and built by Delwood N.E. Optimist Club at Bartholomew Park facility. Our organization selected a committee to investigate the possibility of having these batting cages built. The Select Committee on Batting Cages solicited bids from the Austin business community for the proposed batting cages. The Select Committee then reported its findings to the DNEO Executive Board at which time a motion was made and passed to set aside the necessary funds to build these proposed batting cages and make a formal request to the Parks and Recreation Dept. to approve our proposal.

We hereby respectfully request that the Austin Parks and Recreation approve our proposal authorizing Delwood N.E. Optimist Club to pay for and build two batting cage structures on the Bartholomew Park facility for the purpose of enhancing the Club's baseball program and providing additional facilities for the use by the children who participate in the DNEO baseball program. Your time and consideration are greatly appreciated.

Sincerely,

Carlos G. Balderas

Carlos G. Balderas
Delwood N.E. Optimist Select Committee

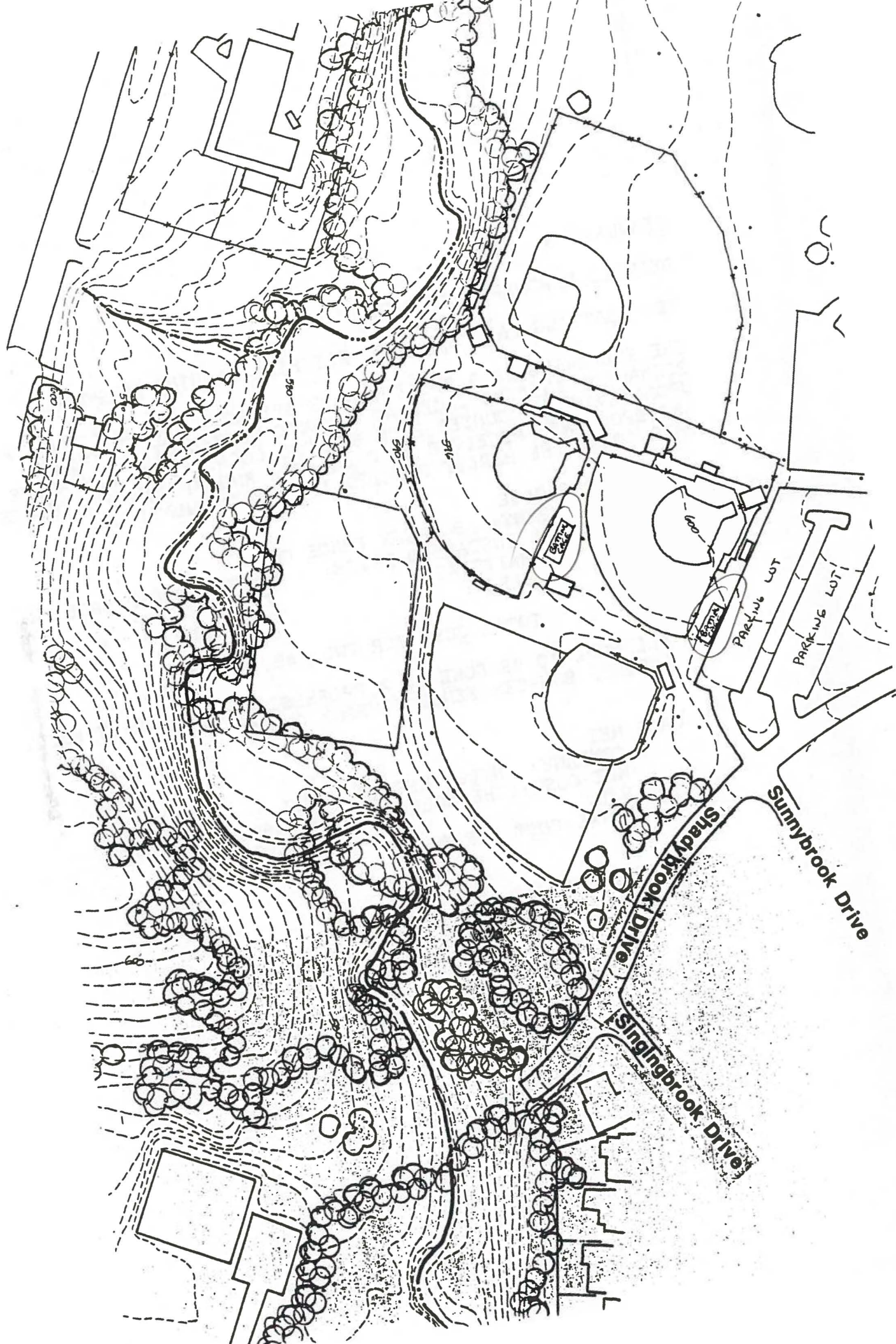
RE

6

30

FEB 14 1992

PARKS AND RECREATION
CITY OF AUSTIN



FEBRUARY 3, 1992

DELWOOD NORTHEAST OPTIMIST CLUB

RE: BATTING CAGE AND NET. PITCHING MACHINE PROPOSAL

THE FOLLOWING IS A BREAKDOWN OF THE COST FOR BUILDING TWO PERMANENT BATTING CAGES AT DELWOOD NORTHEAST OPTIMIST. UPON REVIEWING QUOTES FROM SEVERAL LOCAL FENCE COMPANIES, AND BROCHURES RECEIVED ON CAGE NETS AND PITCHING MACHINES, THIS COMMITTEE HEREBY SUBMITS ITS RECOMMENDATIONS.

BATTING CAGE

COMPANY: SUN-TEX FENCE CO.

TOTAL INSTALLED PRICE: \$2,995.00 PER CAGE

MATERIAL: 2,094.14

LABOR: 900.86

TOTAL COST FOR TWO: \$5,990.00

* ALL WORK TO BE DONE IN A PROFESSIONAL MANNER BY FULLY INSURED SUN-TEX FENCE COMPANY CREWS.

CAGE NET

COMPANY: NYLON NET CO., INC.

NET COST:(THE COLLEGIATE)\$ 485.00 PER CAGE

S/H: 75.00

TOTAL COST FOR TWO: \$1,045.00

PITCHING MACHINE

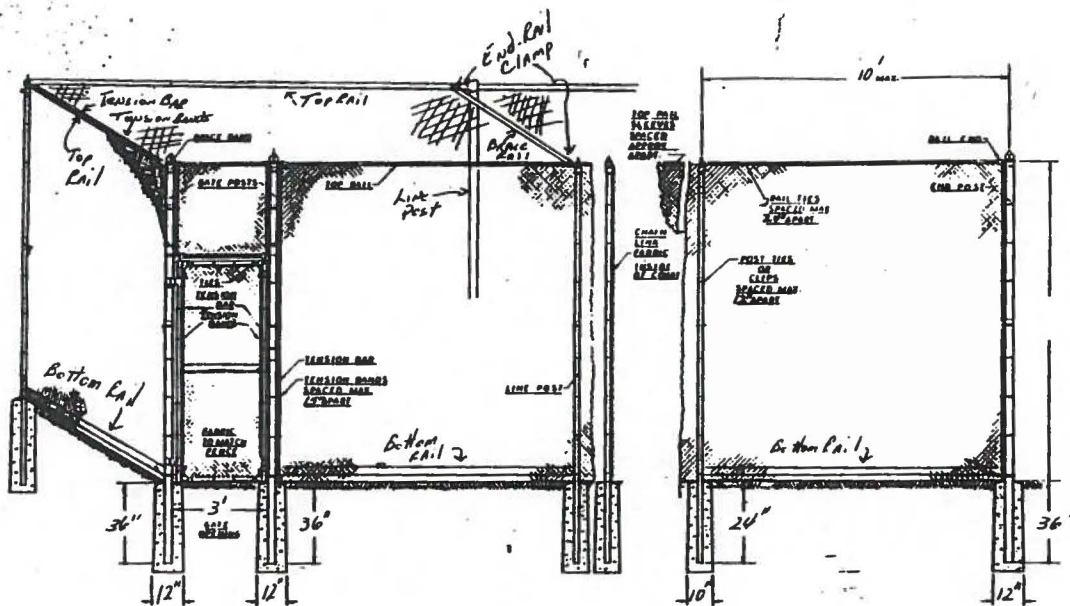
COMPANY: JUGS

P/M COST (JUGS JR.) \$ 945.00

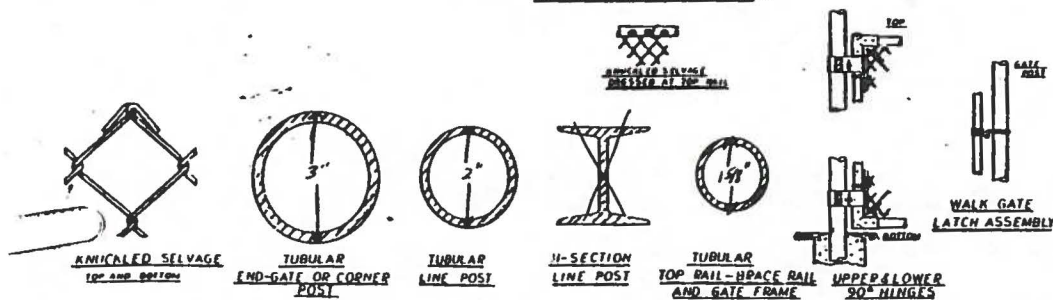
S/H: 98.00

TOTAL COST \$1,043.00

TOTAL COST OF PROPOSAL: \$8,078.00



TYPICAL FENCE ELEVATION - G



Type Fence	Material
Bathing Cage	
Fabric 9 Gauge 2" Mesh 10 Wide	
Line Posts 2" O.D. 2.73 lbs. p.l.f.	
Top Rail 1 7/8" O.D. 2.27 lbs. p.l.f.	
Bottom Rail 1 7/8" O.D. 2.27 lbs. p.l.f.	
Brace Rail 1 7/8" O.D. 2.27 lbs. p.l.f.	
Corner Posts 3" O.D. 5.77 lbs. p.l.f.	
Gate Posts 3" O.D. 5.77 lbs. p.l.f.	
Gate Frame 1 7/8" O.D. 2.27 lbs. p.l.f.	
Tension Wire — Gauge	
Barbed Wire — Strands	
<p>MEMBER</p>	
<p>Northwest Optimist Club Bartholomew Park Bathing Cage</p>	
G. C.	
SUBMITTED BY Richard Calhoun	
DRAWING #	DATE 1/31/92



Don Joos
Charleen Collins

MEMORANDUM

TO: Members of the Parks and Recreation Board

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 18, 1992

SUBJECT: Fern Bluff MUD - Third Consent Agreement Amendment

On February 10, 1992, the City received a request from Fern Bluff MUD to amend its consent agreement to extend the deadline by one year for completion of construction of the District's first \$150,000 worth of park facilities. Fern Bluff MUD is located in the far north Austin area just west of Round Rock, as illustrated by Attachment A.

1 1/2 yrs

\$150,000 X(2)
w/ TPWD

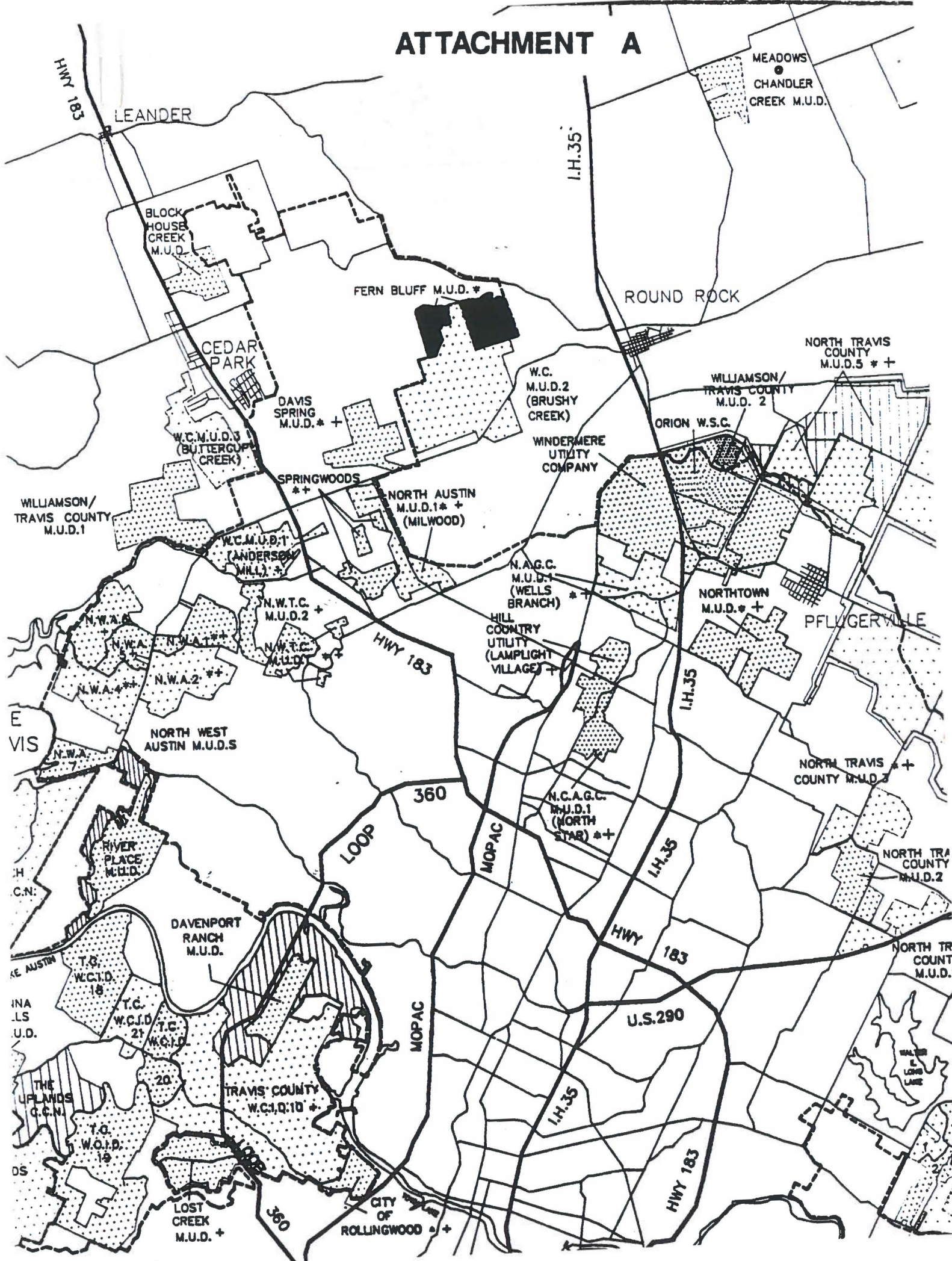
Briefly, the MUD will fail to meet its initial park construction deadline because it has applied for and very recently been awarded a matching grant from the Texas Parks and Wildlife Department for this park project. The MUD postponed expenditure of the \$150,000 in order to go through the application and award process.

This proposed third consent agreement amendment is explained more fully in the attached materials (Attachment B) from the MUD's attorneys. I have included the second amendment (Attachment C) for comparison with the proposed third amendment. You will note that the only substantive change occurs in the second paragraph of Section E2 and is highlighted with an asterisk in both attachments.

RECOMMENDATION: I recommend approval of the request by Fern Bluff MUD to amend its consent agreement to extend by one year its obligations to complete construction of park facilities.

Manuel A. Mollinedo, Director
Parks and Recreation Department

ATTACHMENT A



ATTACHMENT B

STRASBURGER & PRICE, L.L.P.

ATTORNEYS AND COUNSELORS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2600 ONE AMERICAN CENTER
600 CONGRESS AVENUE
AUSTIN, TEXAS 78701-3288
(512) 499-3600

TELECOPIER (512) 499-3660

DALLAS OFFICE
SUITE 4300
901 MAIN STREET
DALLAS, TEXAS 75202
(214) 651-4300

MEXICO CITY CORRESPONDENT
GONZALEZ CALVILLO Y FORASTIERI, S.C.
MONTES URALES NO. 723, P. M.
LOHAS DE CHAPULTEPEC
11000 MEXICO D.F., MEXICO
(525) 202-2370

Sharlene N. Collins
(512) 499-3604

February 7, 1992

Mr. Ben Luckens
Municipal Utility District Coordinator
City of Austin
301 West 2nd Street
Austin, Texas 78701

Re: Fern Bluff Municipal Utility District Park Facilities

Dear Ben:

On behalf of our client, Fern Bluff Municipal Utility District, we are submitting to you our application to amend the District's Consent Agreement. As we discussed, the Second Amendment Agreement to the Consent Agreement requires a \$150,000 contribution for park facilities by the developer to the District to be spent on those facilities within one (1) year of the date of disbursement of the first bond issue. The bond issue occurred on March 27, 1991. The District received \$150,000 from Milburn Investments at that time.

The District then applied for and has received a matching park grant from the Texas Parks and Wildlife Department to build facilities within the Fern Bluff Park. The Department Staff is requiring that the District obtain a letter or other approval from both the City and Milburn Investments that will extend the deadline for completion of the facilities after the March 27, 1992 deadline contained in the Consent Agreement, as currently amended.

The District has diligently pursued this grant. The District applied for the grant in July, 1991 which was the next available review cycle after the District received its recreational funds from Milburn Investments. The grant was approved last month by the Texas Parks and Wildlife Commission. The Texas Parks and Wildlife Department is requiring, as a condition of the funding of the grant, that the District obtain this extension of time. A letter from the Texas Parks and Wildlife Department addressing this issue is enclosed for your review.

March '92 → Sept '93

Mr. Ben Luckens
February 7, 1992
Page 2

The Board of Directors of Fern Bluff Municipal Utility District requests that the City grant an extension of an additional year for the design and completion of construction of the recreational facilities. We are asking for this much additional time because the District will need to obtain a site development permit from the City and may need to obtain approval of a new single lot plat.

We have enclosed a draft Third Amendment Agreement, a letter from the Milburn Company, a resolution of the Fern Bluff Board of Directors as well as the correspondence from Texas Parks and Wildlife.

The District would appreciate your help on this matter. I am sure that the Parks and Wildlife Commission will also appreciate your cooperation with the District.

We look forward to working with you to process this application. Should you need additional materials, please let me know.

Sincerely,



Sharlene N. Collins

SNC:rp
Enclosure
cc: Board of Directors
Larry Fisher
John Tresnicky
0292-35.3L

THIRD AMENDMENT AGREEMENT
TO THE AGREEMENT CONCERNING CREATION AND OPERATION
OF FERN BLUFF MUNICIPAL UTILITY DISTRICT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

The Third Amendment Agreement to the Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District ("Agreement") is made and entered into as of the ____ day of _____, 1992, by and among the City of Austin, Texas ("City"), a home rule city, located in Travis County, Texas acting herein by and through its undersigned duly authorized City Manager, as authorized by specific action of its City Council. Fern Bluff Municipal Utility District ("District") a municipal utility district created on May 27, 1986, by order of the Texas Water Commission and operating pursuant to Chapters 50 and 54 of the Texas Water Code; and Milburn Investments, Inc. ("Milburn"), a Texas corporation, successor in interest to The Bill Milburn Company, a Texas corporation.

W I T N E S S E T H:

WHEREAS, The Bill Milburn Company filed a petition for creation of Fern Bluff Municipal Utility District with the City on November 27, 1984; and

WHEREAS, by ordinance adopted by the City Council of the City on August 8, 1985, (Ordinance No. 850808-I), the City consented to the creation of the District and authorized the execution of an "Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District" by and among the parties ("Consent Agreement"); and

WHEREAS, the Consent Agreement was executed by the City on August 26, 1985, The Bill Milburn Company on September 3, 1985 and the District on July 2, 1986; and

WHEREAS, the parties entered into that certain "First Amendment Agreement to the Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District" on April 17, 1989 which provided that the District would not be required to collect a pre-annexation surcharge from the District's utility customers; and

WHEREAS, the parties entered into that certain "Second Amendment Agreement to the Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District" on April 29, 1991 which provided for modification of certain terms and conditions regarding the funding and construction of recreational

facilities to be located within dedicated parkland within the boundaries of the District; and

WHEREAS, the parties now desire to modify further the provisions concerning the schedule for completion of the construction of the recreational facilities;

NOW, THEREFORE, the City, the District and Milburn agree as follows:

ARTICLE I

A. Article X, Section E2 shall be as amended to read as follows:

2. Milburn, its successors and assigns, shall construct or provide funds to the District for construction of recreational facilities on the dedicated parkland within the District which is shown as Exhibit "G" and which shall be a cost equal to two hundred dollars (\$200.00) per living unit equivalent ("L.U.E.") which is currently estimated to be six hundred thirteen thousand dollars (\$613,000.00) per an estimated three thousand sixty-five (3,065) L.U.E.s. The design and final plans for construction of said recreational facilities shall be submitted to the District's Board of Directors for review and approval which shall not be unreasonably withheld.

* | Design and construction of recreational facilities valued at not less than \$150,000.00 shall commence no later than the date of disbursement of the proceeds of the first bond issue and shall be completed not later than two (2) years from the date of such disbursement. At the time of sale of each subsequent bond issue from which Milburn, its successors and assigns receives bond proceeds, such party which has received bond proceeds shall commence design and construction of additional recreational facilities or provide funds to the District equal in value to fifteen percent (15%) of the bond issue being sold at that time. By way of example, if the next bond issue is in the amount of \$2,000,000.00, such party receiving bond proceeds shall be required to fund or construct \$300,000.00 in recreational facilities. Provision of additional recreational facilities shall continue as bond issues are sold from which a party receives bond proceeds until recreational facilities valued in the required aggregate amount have been funded and constructed. The determination as to whether the party receiving bond proceeds will provide funds for the District to construct the recreational facilities or whether such party itself shall construct the facilities shall be made by the Board of Directors of the District at their sole discretion.

As set forth above, the required aggregate value of \$613,000.00 may vary depending upon the total number of L.U.E.s estimated for full build-out from time to time. Provided, however, notwithstanding anything to the contrary herein, regardless of the amount of bonds sold by the District from time to time, Milburn, its successors or assigns shall commence funding and construction of any remaining portions of the required aggregate value of recreational facilities not already constructed or funded, not later than the time that development within the District is seventy-five percent (75%) completed and shall be completed not later than full build-out of the District as determined by the District's Board of Directors. It is understood and agreed by all parties hereto that the District is not issuing bonds for the development and maintenance of recreational facilities, but rather, the construction or funding of such recreational facilities by Milburn, its successors and assigns concurrently with the issuance of bonds is solely to determine the timing of such construction or funding. Milburn, its successors and assigns specifically waive any and all rights, if any, to challenge the obligation to construct or fund recreational facilities hereunder upon a claim that the District is attempting to fund recreational facilities with bond proceeds. In the event that this Second Amendment Agreement shall be declared invalid for any reason, the obligation of Milburn, its successors and assigns to construct or fund such recreational facilities shall be as originally stated prior to this Second Amendment Agreement.

ARTICLE II

All provisions of the Consent Agreement shall be and remain in full force and effect as therein written, except as otherwise expressly provided herein.

EXECUTED in multiple copies, each of which shall constitute an original, this ____ day of _____, 1992.

ATTEST:

CITY OF AUSTIN, TEXAS

By: _____
City Clerk

By: _____
City Manager

APPROVED:

By: _____
Assistant City Attorney

ATTEST:

FERN BLUFF MUNICIPAL
UTILITY DISTRICT

By: _____
Secretary, Board of Directors

By: _____
President, Board of Directors

MILBURN INVESTMENTS, INC.

By: _____
Bill Milburn, President

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 1992, by _____ of CITY OF AUSTIN, Texas, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 1992, by _____, as _____ of FERN BLUFF MUNICIPAL UTILITY DISTRICT, on behalf of said district.

Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 1992, by _____, as _____ of MILBURN INVESTMENTS, INC., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires: _____

0292-38.3

Milburn Investments, Inc.

Building New Homes the Old Way

February 7, 1992

Ms. Jean Cochran
President, Board of Directors
Fern Bluff Municipal Utility District
2600 One American Center
600 Congress Ave.
Austin, Texas 78701

RE: Consent Agreement Amendment

Dear Ms. Cochran:

Milburn Investments, Inc. hereby agrees to extend the time period for completion of design and construction of recreational facilities within Fern Bluff Park from March 27, 1992 to March 27, 1993. We understand that this extension is requested in order for the District to comply with requirements to obtain the matching state grant approved by the Texas Parks and Wildlife Commission on January 23, 1992.

We understand that a consent agreement amendment to reflect this extension of time will be processed at the City of Austin. This extension is not made for the purposes of delaying the construction of the proposed park improvements, but to facilitate the District's funding of its matching grant. We urge the District to continue to move forward with all deliberate speed to complete the park improvements.

Sincerely,



Joseph A. DiQuinzio, Jr.
Vice President

JD:ad

RESOLUTION

THE STATE OF TEXAS \$
 \$
COUNTY OF TEXAS \$

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF FERN BLUFF MUNICIPAL UTILITY DISTRICT THAT:

WHEREAS, Fern Bluff Municipal Utility District ("District") and the City of Austin ("City") entered into that certain "Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District ("Consent Agreement") on July 2, 1986; and

WHEREAS, that Consent Agreement was amended on June 14, 1989 to delete the requirement that a pre-annexation surcharge be collected from customers by the District; and

WHEREAS, the Consent Agreement was further amended on April 29, 1991 to modify certain terms and conditions regarding the funding and construction of recreational facilities to be located within dedicated parkland within the boundaries of the District; and

WHEREAS, the District now desires to amend the Consent Agreement to modify the provisions of the Consent Agreement concerning construction of recreational facilities to provide for an extension of time for completion of construction of such recreational facilities;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The Board of Directors requests the City agree to amend the Consent Agreement to modify the terms and conditions relating to the schedule for completion of construction of recreational facilities.

Section 2. The District's attorney is directed to file this request with the City and to do all things necessary to process this request.

Section 3. The Secretary of the Board is directed to file a copy of this Resolution in the District's official records.

ADOPTED this 6th day of February, 1992.

(SEAL)



Jean Cochran
President, Board of Directors

ATTEST:



James D. Brush, II
Secretary, Board of Directors
0292-36.3



COMMISSIONERS

YGNACIO D. GARZA
Chairman, Brownsville

JOHN WILSON KELSEY
Vice-Chairman
Houston

LEE M. BASS
Ft. Worth

HENRY C. BECK, III
Dallas

TERESE TARLTON HERSHEY
Houston

GEORGE C. "TIM" HIXON
San Antonio

CHUCK NASH
San Marcos

BEATRICE CARR PICKENS
Dallas

WALTER UMPHREY
Beaumont

TEXAS
PARKS AND WILDLIFE DEPARTMENT
4200 Smith School Road • Austin, Texas 78744 • 512-389-4800

ANDREW SANSONI
Executive Director

January 30, 1991

Ms. Jean Cochran, President
Fern Bluff MUD
8501 Columbia Falls Dr.
Round Rock, Texas 78681

Re: Fern Bluff MUD Park

Dear Ms. Cochran:

As we discussed during our meeting on January 27, 1992, Fern Bluff MUD's park project has been approved by the Texas Parks and Wildlife Commission contingent upon satisfactory clarification of the contractual obligation between the MUD, Milburn Investments, Inc., and the City of Austin. Documents submitted by the MUD demonstrate the district's need to proceed with the project by March 27, 1992 as specified in the district's amended creation agreement.

Upon examination of this agreement, it appears that the park must be complete and all funds expended by the March 27, 1992 deadline. However, it is unlikely that the Department will even be in a position to offer the district a contract for the project by that date. In this regard, the MUD has agreed to request a contractual amendment with Milburn Investments, Inc. and the City of Austin providing an extension of the March deadline before the Department can clear the project for funding. Upon receipt of such an extension, we will proceed with the next phase of contract documentation.

Prior to entering into a contract agreement for this grant, the Department will require the following:

1. A cultural resources survey and clearance from the Texas Antiquities Committee (guidelines attached).
2. An executed lease with the Round Rock Independent School District for the 3-acre parcel adjacent to the district's existing park, to include a metes and bounds description and boundary map (sample lease attached).

Ms. Jean Cochran
Page 2

If you have any questions regarding our discussion or the Department's requirements, please feel free to call Steve Bosak at 512/389-4947.

Sincerely,



Tim Hogsett
Chief
Grants-In-Aid Branch

TH:ed

Enclosures

SECOND AMENDMENT AGREEMENT
TO THE AGREEMENT CONCERNING CREATION AND OPERATION
OF FERN BLUFF MUNICIPAL UTILITY DISTRICT

THE STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

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W I T N E S S E T H:

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WHEREAS, by ordinance adopted by the City Council of the City on August 8, 1985, (Ordinance No. 850808-I), the City consented to the creation of the District and authorized the execution of an "Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District" by and among the parties ("Consent Agreement"); and

WHEREAS, the Consent Agreement was executed by the City on August 26, 1985, The Bill Milburn Company on September 3, 1985 and the District on July 2, 1986; and

WHEREAS, the parties entered into that certain "First Amendment Agreement to the Agreement Concerning Creation and Operation of Fern Bluff Municipal Utility District" on April 17, 1989 which provided that the District would not be required to collect a pre-annexation surcharge from the District's utility customers; and

WHEREAS, the Consent Agreement provides certain rights and obligations regarding the funding and construction of recreational facilities to be located within dedicated parkland within the boundaries of the District; and

WHEREAS, the parties now desire to modify the provisions concerning funding and construction of the recreational facilities;

NOW, THEREFORE, the City, the District and Milburn agree as follows:

ARTICLE I

A. Article X, Section E2 shall be as amended to read as follows:

2. Milburn, its successors and assigns, shall construct or provide funds to the District for construction of recreational facilities on the dedicated parkland within the District which is shown as Exhibit "G" and which shall be a cost equal to two hundred dollars (\$200.00) per living unit equivalent ("L.U.E.") which is currently estimated to be six hundred thirteen thousand dollars (\$613,000.00) per an estimated three thousand sixty-five (3,065) L.U.E.s. The design and final plans for construction of said recreational facilities shall be submitted to the District's Board of Directors for review and approval which shall not be unreasonably withheld.

Design and construction of recreational facilities valued at not less than \$150,000.00 shall commence no later than the date of disbursement of the proceeds of the first bond issue and shall be completed not later than one (1) year from the date of such disbursement. At the time of sale of each subsequent bond issue from which Milburn, its successors and assigns receives bond proceeds, such party which has received bond proceeds shall commence design and construction of additional recreational facilities or provide funds to the District equal in value to fifteen percent (15%) of the bond issue being sold at that time. By way of example, if the next bond issue is in the amount of \$2,000,000.00, such party receiving bond proceeds shall be required to fund or construct \$300,000.00 in recreational facilities. Provision of additional recreational facilities shall continue as bond issues are sold from which a party receives bond proceeds until recreational facilities valued in the required aggregate amount have been funded and constructed. The determination as to whether the party receiving bond proceeds will provide funds for the District to construct the recreational facilities or whether such party itself shall construct the facilities shall be made by the Board of Directors of the District at their sole discretion.

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not later than the time that development within the District is seventy-five percent (75%) completed and shall be completed not later than full build-out of the District as determined by the District's Board of Directors. Its is understood and agreed by all parties hereto that the District is not issuing bonds for the development and maintenance of recreational facilities, but rather, the construction or funding of such recreational facilities by Milburn, its successors and assigns concurrently with the issuance of bonds is solely to determine the timing of such construction or funding. Milburn, its successors and assigns specifically waive any and all rights, if any, to challenge the obligation to construct or fund recreational facilities hereunder upon a claim that the District is attempting to fund recreational facilities with bond proceeds. In the event that this Second Amendment Agreement shall be declared invalid for any reason, the obligation of Milburn, its successors and assigns to construct or fund such recreational facilities shall be as originally stated prior to this Second Amendment Agreement.

ARTICLE II

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EXECUTED in multiple copies, each of which shall constitute an original, this ____ day of _____, 1991.

ATTEST:

CITY OF AUSTIN, TEXAS

By: _____
City Clerk

By: _____
City Manager

APPROVED:

By: _____
Assistant City Attorney

ATTEST:

**FERN BLUFF MUNICIPAL
UTILITY DISTRICT**

By: _____
Secretary, Board of Directors

By: _____
President, Board of Directors

ATTEST:

MILBURN INVESTMENTS, INC.

By: _____

By: _____
Bill Milburn
President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day
of _____, 19__, by _____, as
_____ of CITY OF AUSTIN, Texas, a
municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires:

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day
of _____, 19__, by _____, as
_____ of FERN BLUFF MUNICIPAL
UTILITY DISTRICT, on behalf of said district.

(SEAL)

Notary Public, State of Texas

Typed/Printed Name of Notary

My Commission Expires:

This instrument was acknowledged before me on this the ____ day of _____, 19__, by _____, as _____ of MILBURN INVESTMENTS, INC., a Texas corporation, on behalf of said corporation.

My Commission Expires:

-5-



MEMORANDUM

TO: Parks and Recreation Board Members

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 19, 1992

SUBJECT: Proposed Cemetery Fee Increases

The following information is presented for your recommendation to the City Council. Council is being asked to authorize an increase in fees at the City-owned cemeteries at its meeting of March 5, 1992. In addition, the City is the only cemetery operation in Austin that does not offer a time-payment plan for pre-need burial space. Council is further being asked to offer such a program. Since ownership is not transferred until the full payment is made, the City is protected from loss of assets.

Exhibit A, attached, has proposed increases. Exhibit B, attached, has comparative fee schedules.

The intent of the contract with InterCare Corporation is to provide for a self-funded program to continue the quality of cemetery services available, and to provide for the operation and maintenance of the cemeteries in perpetuity. The contract further stipulates a guaranteed annual revenue for the contractor, with the City subsidizing the difference between actual revenues and the guaranteed amount. If approved, the fee increase will reduce the City subsidy required for cemetery operations in future years. The increase will also bring the City-owned cemeteries more in line with privately-owned cemeteries in Austin. If these fees are approved and implemented by April 1, 1992, it is estimated that an additional \$51,000 in revenues would be realized through September of 1992, thereby significantly reducing the amount the City will be required to pay. It is anticipated that the City will break even in FY 92-93. Fees were last increased in October 1989.

The following reflects a six year expenditure and revenue history of the cemetery operation.

	1985-86	City of Austin 1986-87	1987-88	1988-89	1989-90	InterCare 1990-91
Expenditures	\$986,856	\$810,923	\$786,773	\$678,419	\$835,744	\$736,084
Revenues	<u>476,034</u>	<u>434,132</u>	<u>532,309</u>	<u>513,547</u>	<u>554,939</u>	<u>636,146</u>
(Cost)/					1	2
Savings	\$(510,822)	(376,791)	(254,464)	(164,872)	(280,805)	(99,938)

1. Includes \$234,807 in transfers from the Perpetual Care Fund

2. Includes \$99,938 in transfers from the Perpetual Care Fund

This Department supports the proposed increase, in order to reduce the subsidy needed to offset cemetery operating costs.

Please let me know if you need additional information.



Manuel A. Mollinedo, Director
Parks and Recreation Department

MAM/KVW

City of Austin
Cemetery Fees and Charges
Proposed Changes FY 1991-92

SPACE SALES	CURRENT FEE	PROPOSED FEE
Austin Memorial Park Cemetery		
Block 1	\$ 595	\$ 795
Block 2	595	795
Block 3	595	795
Block 4	595	795
Block 5	595	795
Block 5A (flush monuments only)	565	795
Block 5B	595	795
Block 11 (flush monuments only)	430	675
Block 12	430	795
Infant Spaces (as designated in cemetery)	75	125
Cremation Spaces (as designated in cemetery)	75	125
Evergreen Cemetery		
Section F (infant spaces)	75	125
Section G	490	645
Section H (flush monuments only)	365	645
Section J	490	645
Cremation Spaces (as designated in cemetery)	75	125
Oakwood and Annex		
Adult Spaces (as designated in cemetery)	NA	795
Infant Spaces (as designated in cemetery)	NA	125
Cremation Spaces (as designated in cemetery)	NA	125

		CURRENT FEE	PROPOSED FEE
Interments			
Adult:	Weekdays for funerals scheduled before 3 p.m.	\$ 325	\$ 375
	Weekdays for funerals scheduled 3 p.m. and later	375	425
	Saturday scheduled 3 p.m. and later	375 N/A	425 475
	Sunday scheduled 3 p.m. and later	N/A N/A	575 600
	Holidays (all City recognized holidays)	375	425
Infant and Cremated Remains:			
	Weekdays for funerals scheduled before 3 p.m.	90	90
	Weekdays for funerals scheduled 3 p.m. and later	120	150
	Saturday	120	150
	Holidays (all City recognized holidays)	120	150
	Funeral scheduled without twelve (12) working hours notice	120	120
Disinterments			
Adult:	Disinter (raising of vault not included)	325	425
	Disinter and reinter	650	800
	Raising of vault	N/A	150
Infant:	Disinter	140	140
	Disinter and reinter	280	280
	Cremated Remains	90	90

	CURRENT FEE	PROPOSED FEE
Other Services		
Deed Recording	\$ 6	\$ 8
Remove live trees for space openings/closings (with applicable permit)	200	200
Tent Setups	85	85
Liner Sales (coordinated with funeral homes)	170	170
Monument Setting		
All 2-piece monuments	.40/sq. in.	.40/sq. in.
1-piece monument >300 sq. in.	.40/sq. in.	.35/sq. in.
1-piece monument <300 sq. in.	.30/sq. in.	.30/sq. in.
Military Markers Tabloid	65	65
Military Markers >300 sq. in.	.40/sq. in.	.35/sq. in.
Military Markers <300 sq. in.	.30/sq. in.	.30/sq. in.
Corner and/or Foot Markers <50 sq. in.	.40/sq. in.	15
Corner and/or Foot Markers >50 sq. in.	.40/sq. in.	.30/sq. in.
Administrative Fees		
(1) Administrative fee associated with monument settings performed by outside contractor. (Subject to governing rules and regulations)		
1-piece, less than 300 square inch	N/A	.15/sq. in.
All others	N/A	.20/sq. in.
(2) Administrative fee associated with use of liners other than those available through InterCare Corp. (Except Wilbert-Set Vault)	50	50

EXHIBIT B

Comparative Fee Schedule
Burial Spaces

<u>Cemetery</u>	<u>Upright</u>	<u>Flush</u>	<u>Infant</u>	<u>Cremains</u>
*Assumption	\$750	High \$550 Low \$450	Low \$100 High \$200	N/A
*Capital Memorial Gardens	N/A	High \$1,685 Low \$743		\$280
*Capital Memorial Hill	N/A	High \$1,148 Low \$648		\$230
*Cook-Walden/ Forest Oaks	N/A	High \$1,560 Low \$640		\$132.50
*Onion Creek Memorial Park	\$795 Hillview	\$795		
	High-\$795 Low-\$525 Garden of Peace			
Austin Memorial Park	\$595	\$497.50	\$75	\$75
Evergreen	\$490	\$365	\$75	\$75

* Pre-need Burial Spaces Sold on Time-Payout Plans

Comparative Fee Schedule
Burial Services

<u>Cemetery</u>	<u>Interment + Set-Up</u>	<u>Disinterment</u>	<u>Monument Setting</u>
Capital Memorial Garden	Adult Infant/Cremains M-F \$445 \$75/\$100 Weekend/Holidays And/or After 4 p.m. \$510 \$100/\$125 Sundays \$825 \$250 After 4 p.m. \$875 \$275	\$800-Adult \$200-Infant	.35/sq. in.
Capital Memorial Hill	Same as Capital Memorial Garden		
Forest Oaks	Same as Capital Memorial Garden		
Onion Creek	\$325 \$125 After 3 p.m. \$375 \$175 Sundays and Holidays \$400 \$200		\$1/sq in (any monuments purchased from any source other than Onion Creek)
City of Austin	\$400 \$90 After 3 p.m. Mondays-Fridays and Weekends and Holidays \$375 \$120	\$325-Adult \$140-Infant	.40/sq.in.
Assumption	\$425 \$100 After 12 Noon Saturday and Sundays and Holidays \$550 \$225		



MEMORANDUM

TO: Parks and Recreation Board

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 19, 1992

SUBJECT: Issuance of RFP's for Concession Contracts

The Parks and Recreation Board's Concession Subcommittee is meeting immediately prior to the February 25 Board meeting to review suggested changes to the Concession Policy and to review draft Requests for Proposal for the Wooden Rowboat and Carousel projects. Included in your packet are copies of the draft documents. At the February 25 meeting, the Board will be reviewing the Subcommittee's recommendations and taking action.

Please let me know if you need additional information.

Manuel A. Mollinedo, Director
Parks and Recreation Department

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CAROUSEL CONCESSION AT
BARTON SPRINGS, ZILKER PARK

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SCOPE OF WORK AND PROPOSAL REQUIREMENTS

1.0 PURPOSE

The City of Austin Parks and Recreation Department is pleased to invite proposals from qualified artisans and craftspeople for construction and operation of a traditional wooden carousel at Barton Springs in Zilker Park.

2.0 SCOPE OF WORK

2.1 Objective

The City's objective is to enter into a contract with a qualified and experienced individual or company, hereafter referred to as the Contractor, to provide a quality carousel concession operation which is compatible with other recreational activities in the Barton Springs vicinity such as the playscape and Zilker Railroad. The carousel figures, benches, panels, rounding boards, and platform shall be constructed of wood without the use of molded or plastic parts. The City seeks proposals which include provisions for minimizing any negative environmental impacts associated with such an operation, including noise. The following tasks and provisions represent a summary of the City's requirements of the successful bidder.

TASKS AND PROVISIONS

- The Contractor must demonstrate expertise and competence in construction, operation and maintenance of a carousel and a knowledge of accepted standards of the industry.
- The Contractor must outline the experience and qualifications he, she, or the firm possesses which demonstrates an ability to effectively provide an original carousel concession of top quality using traditional woods and techniques.
- The Contractor shall conform to the Scope of Services, General Duties as outlined in Section II, Special Contract Provisions.
- The Contractor shall conform to the Scope of Services, Specific Duties as outlined in Section III, Special Contract Provisions.
- The Contractor shall pay to the City monthly for the privilege of operating this concession either a percentage of gross sales or a guaranteed minimum amount.

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2.2 Implementation

The Contractor shall furnish and operate a carousel concession including staffing, maintenance, ancillary souvenir sales, and any other function normal and consistent with an operation of this type during the hours of normal park operation.

2.3 Acceptance of Work

All performance and services under this contract must be of high standard and quality and must conform to good trade practices and services shall be rendered efficiently as prescribed by this document. All plans for site improvements will require approval of the Director of Parks and Recreation. Exclusive right to provide a service or product on City parkland is not implied or guaranteed in any concession contract.

2.3.1 Contractor shall establish and maintain during the term of agreement separate records and accounts, including a separate bank account, relating to the operation of the carousel concession at Zilker Park, and which records and accounts shall be subject to examination and audit by the City at any time.

2.3.2 Contractor shall pay to the City monthly without demand, at the office of the Director of the Parks and Recreation department of the City of Austin, the amount of rent shown on the pricing sheet of all annual gross sales or a guaranteed minimum amount. The minimum percentage of gross sales which the City will consider for permanent concession facilities is ten percent (10%), to be prepaid through the use of serially-numbered tickets as further outlined in Section II, General Duties.

2.3.3 Contractor shall hire at his own cost and expense, train and supervise a staff of employees whose appearance, manner, and character will reflect credit on the City and will be acceptable to the patrons of the concession, to assist him in the performance of this contract.

2.3.4 Contractor shall implement all construction plans at the Contractor's expense once they are approved by the City.

2.3.5 Contractor shall provide all equipment necessary to the operation of this concession at the contract premises including auxiliary seating, ticket booth and waste containers.

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3.0 PROPOSAL FORMAT

Prefacing the proposal, the offeror shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. The proposal itself shall be organized in the following format and informational sequence:

- 3.1 Part I-Business Organization: State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- 3.2 Part II-System Concept and Solution: Define in detail your understanding of the objective presented in Paragraph 2.0 Scope of Work of this request for proposal and your system solution. Provide all details as required in Paragraph 2.0 Scope of Work in addition to those facts you deem necessary to evaluate your proposal.
- 3.3 Part III-Program: Describe your concession program, construction proposal and operational design, including the adjacent outdoor area for waiting riders, and any plans for implementation. The construction proposal should be a conceptual design describing the carousel proper, the covering pavillion or gazebo, and all site modifications in general terms. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Statement of Work and your plan for accomplishment. Specifically indicate:
 - a. Scope of Service- A fully detailed description of the services to be provided.
 - b. Length of Contract- Indicate the minimum contract terms you feel are appropriate for the services proposed and why.
 - c. Record of Service- Provide details of your experience demonstrating your ability to successfully provide the service proposed.
 - d. Marketing Plan- Discuss marketing strategies to include, but not limited to: Exterior Signage, Target Markets, Publicity, etc.
- 3.4 Part IV-Project Management Structure: Provide a general explanation and chart which specifies management responsibilities. **NOTICE OF NO INTENT TO SUBCONTRACT: IF OFFEROR DOES NOT INTEND TO SUBCONTRACT ANY WORK UNDER THIS CONTRACT, OFFER MUST AFFIRMATIVELY SO STATE ON "SUBCONTRACT DISCLOSURE FORM" IN THE MINORITY BUSINESS PARTICIPATION PACKET ATTACHED HERETO.**

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- 3.5 Part V-Prior Experience: Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 1980. Supply references, who can verify the quality of the services provided, including name, title, present address, and phone number.
- 3.6 Part VI-Personnel: Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to this person and the percentage of time each person will devote to this work. Identify persons by name and title. Provide all resumes.
- 3.7 Part VII-Authorized Negotiator: Include name, address, and telephone number of person in your organization authorized to negotiate contract terms and render binding decisions on contract matters.
- 3.8 Part VIII-Cost Proposal: Information described in following subsections is required from each offeror.
- a. Provide a detailed cost breakdown of your anticipated investment and annual gross revenue. This should include only those costs directly related to equipment.
 - b. Itemize all equipment necessary for the operation of the concession not provided by the City.
 - c. Provide a pricing sheet to include the percentage of gross sales, less sales tax and the estimated dollar amount that the Contractor proposes to pay the City of Austin and/or a minimum guaranteed amount, as consideration of the rights and privileges granted herein.

4.0 COMPETITIVE SELECTION

This procurement will comply with applicable City of Austin Policy. The successful Contractor will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph 5.0 below shall be applied to all eligible, responsive Contractors in comparing proposals and selecting the successful offeror. Award of a contract may be made without discussion with Contractors after proposals are received. Proposals should, therefore, be submitted on the most favorable terms. At the option of the City, interviews may be held with respondents as part of the evaluation process.

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5.0 PROPOSAL EVALUATION FACTORS

The evaluation criteria will have the following rank of importance. The items are listed in descending order of importance, with item a. being the most important and item g. being the least important.

- a. System Concept and Solutions Proposed (Grasp of overall concession operation and how proposed service meets City objectives, responsiveness to terms and conditions, completeness and thoroughness of the data and documentation.)
- b. Demonstrated Applicable Experience
- c. Revenue to the City
- d. Evidence of Good Organization and Management Practices
- e. Personnel Qualifications
- f. Schedule
- g. MBE/WBE Participation - Prime or subcontractors.

6.0 COST INCURRED IN RESPONDING

All cost directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of and shall be borne by Offeror(s).

7.0 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be conducted on _____, 1992 at 10:00 a.m. at the Barton Springs Bathhouse, 2201 Barton Springs Road, Austin, Texas 78746.

8.0 FINANCIAL REPORTS

The Contractor shall submit monthly financial reports on a form to be supplied by the City to the Contract Administrator appointed by the City and to the Parks and Recreation Accounting Section.

9.0 PROPOSAL ACCEPTANCE PERIOD

All proposals must include a statement that they are valid for a minimum period of ninety (90) days subsequent to the RFP closing date.

10.0 CONTRACT INCORPORATION

Contractor should be aware that the contents of the successful proposal will become a part of the subsequent contractual documents. Failure of Contractor to accept this obligation may result in the cancellation of any award. Any damages occurring to the City as a result of the Contractor's failure to contract may be recovered from the Contractor.

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11.0 NEGOTIATIONS

11.1 The City reserves the right to negotiate all elements which comprise the Contractor's proposal to ensure that the best possible consideration be afforded to all concerned.

11.2 The City reserves the right to reject any and all proposals and to resolicit for proposals in such an event.

12.0 CONTRACT COMPLIANCE STATEMENT

Offeror shall state his compliance with all applicable rules and regulations of Federal, State and Local governing entities. Offeror must state his compliance with terms of this Request for Proposal.

13.0 RELEASE OF INFORMATION

Submission of information relative to this REP shall not be released by the City during the proposal evaluation process or prior to contract award.

14.0 PROPRIETARY INFORMATION

If an offeror does not desire proprietary information in the proposal to be disclosed, he is required to identify all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If the offeror fails to identify proprietary information, he agrees that by submission of his proposal that those sections shall be deemed non-proprietary and made available upon public request.

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CAROUSEL CONCESSION AT
BARTON SPRINGS, ZILKER PARK

SECTION I

STANDARD CONTRACT PROVISIONS

1.0 SCOPE OF WORK AND SPECIAL CONTRACT PROVISIONS

The Contractor shall conform to the Scope of Work and Special Contract Provisions and the Contractor's proposal as submitted. However, in the event any conflict should arise between the Contractor's proposal and this contract, the latter shall govern.

2.0 TERM OF AGREEMENT

2.1 Based upon the Contractor's proposed investment in renovation of the concession facility, this Agreement shall be in effect for a period of _____ years (~~maximum~~ of five years) from the date of its commencement, that being on or about _____, 1992.

2.2 Subject Agreement may, however, be extended for up to _____ year periods (~~maximum~~ of three renewable options of five years each) subject to the approval of the Contractor and the City Manager or his designee.

2.3 Upon expiration of the initial term or period of extension, Contractor agrees to hold over under the terms and conditions of this Agreement for such period of time as is reasonably necessary to resolicit, provided such period shall not exceed one hundred and eighty (180) days.

3.0 TERMINATION AND REMEDIES. CANCELLATION

3.1 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event a demand is made, and no assurance is given within thirty (30) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

3.2 A party may terminate this Agreement if the other fails to cure a material breach which substantially impairs the value of the contract as a whole to the non-breaching party within thirty (30) days of receipt of written notice being given by the other party. If more than thirty (30) days are required to cure such default or breach, a reasonable time in excess of said days may be established, provided both parties agree in writing as to the time period to be substituted. In the event such default or breach is not cured within a specified time, the Contract may be terminated upon thirty (30) days written notification.

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3.3 In lieu of termination, the City reserves the right to assess a payment of twenty-five dollars (\$25) per day for each day that a material breach remains uncured past the thirty (30) days after notification by the City.

3.4 It is further understood and agreed that the failure of the Contractor to comply with any and/or all of the terms herein shall authorize the City, or its agent, at the City's option, to cancel this Agreement and repossess the premises described herein, and in the event legal action is undertaken by the City to collect rents due hereunder, to collect damages growing out of or arising from this Agreement, or to in any way enforce the provisions of the Agreement, the Contractor shall be obligated to the City in an amount of ten percent (10%) of such recovery as expenses of such legal action, which ten percent (10%) shall be in addition to court costs.

3.5 Upon termination, whether by uncured default, breach or in accordance with the force majeure clause herein, the minimum remedies of each of the parties is as follows: Contractor shall provide the City with documentation as to costs; and the City shall pay the Contractor for all such cost incurred to the date of termination at the standard rates specified in this Agreement, provided that the City has received reasonable value from the service performed.

3.6 The City may cancel for convenience this Agreement upon thirty (30) days written notice to the Contractor should the City of Austin cease to operate the facility or the facility no longer function as a concession. Effective date of such notice shall begin three (3) days after date of posting with the United States Postal Service with said notice being sent to last known address of Contractor.

4.0 SCOPE OF SERVICES/GENERAL DUTIES

The Contractor shall conform to the scope of services, GENERAL DUTIES, as found in Section II herein.

5.0 SCOPE OF SERVICES/SPECIFIC DUTIES

The Contractor shall conform to the scope of services, SPECIFIC DUTIES, as found in Section III herein.

6.0 NEGOTIATIONS

The City reserves the right to have any additional terms and conditions incorporated into the Agreement provided an authorized modification to the contract is mutually agreed upon and duly executed by both parties.

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7.0 RELEASE OF PREMISES AND PHYSICAL DAMAGES TO SAME

Contractor shall quit and surrender the premises described herein, including the carousel, covering structure and any other fixed improvements, at the expiration of the term of this Agreement in as good a condition as normal wear and tear elements of the weather thereof will permit. Contractor further authorizes City, or its agent, to re-enter and take possession of said premises if the same became vacant during the term of this Agreement.

8.0 FORCE MAJEURE

Neither party shall be held responsible for losses resulting if the fulfillment of any terms or provisions of this contract are delayed or prevented by any cause not within the control of the party whose performance is interfered with and which said party is unable to prevent by the exercise of reasonable diligence. In addition, no compensation will be given by the City for any loss incurred as a result of vandalism or due to special events within Zilker Park approved by the Director of Parks and Recreation.

9.0 GRATUITIES

The City may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the performing of this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

10.0 INSURANCE

The Contractor shall carry insurance in the following types and amounts for the duration of this contract and furnish Certificates of Insurance as evidence thereof:

10.1 Statutory Workmen's Compensation

10.2 Comprehensive General Liability Insurance with minimum Bodily Injury combined single limit of \$500,000 for each occurrence and Property Damage limits of \$250,000 for each occurrence to include Premises - Operations, Broad Form Property Damage, Personal Injury and Contractual Liability coverage.

10.3 Automobile Liability Insurance for all owned, non-owned, and hired vehicles with limits for Bodily Injury of \$250,000 for each person and \$500,000 for each occurrence and Property Damage limits of \$250,000 for each occurrence.

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If the insurance policies are not written for the amount specified in 10.2 and 10.3 above, the Contractor is required to carry an Excess Liability insurance policy for any difference in the amounts specified. The Contractor shall be responsible for any deductible amounts stated in the policies.

The Contractor shall not commence work under this contract until he has obtained all required insurance and until such insurance has been reviewed by the City of Austin Purchasing Office. The required insurance must be written by a company licensed to do business in the State of Texas at the time the policy is issued. In addition, the company must be acceptable to the City and all insurance (other than Workmen's Compensation) shall be endorsed to include the City as an additional insured thereunder.

The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled or reduced, restricted, or limited until 45 days after the City has received written notice as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the operations to which the insurance applies, the expiration date and the above-mentioned notice of cancellation clause.

The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, for the claims history of the industry as well as the Contractor.

11.0 INDEMNITY

Contractor shall save the City free and harmless from all claims or liability for damages to any person or persons for injuries to person or personal injuries resulting in the death of any person or loss or damage to property occasioned by or in connection with the Contractor's exercise of the rights and privileges hereby granted. Contractor hereby assumes full responsibility for the character, acts and conduct of all persons employed by Contractor.

12.0 Contractor CERTIFICATION

The Contractor certifies that the fees in this Agreement have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor. The Contractor also certifies that his firm complies with the requirements of City of Austin Ordinance No. 720615-A, Non-Discriminatory Employment Requirements, adopted June 15, 1972.

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13.0 CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the City (within two (2) working days after being notified) of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the Legal Department and the affected City Department, PO Box 1088, Austin, Texas 78767.

14.0 LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

14.1 The Contractor shall at all times observe and comply with all Federal and State laws and City ordinances and regulations which, in any manner, affect the operation of this concession and shall observe and comply with all orders, laws, ordinances, and regulations which may be enacted by a legislative body having jurisdiction or authority over such concession.

14.2 The Contractor further agrees to procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful operation of this concession. All taxes imposed on the operation of this business or the property used in this business owned by the Contractor, imposed by Federal State, or governmental agency, shall be paid when due by the Contractor.

15.0 AUDITING REQUIREMENTS

15.1 It is agreed that Contractor shall maintain and make available for inspection, audit and/or reproduction by any authorized representative of the City or any other governmental agency, books, documents, and other evidence pertinent to the costs and expenses of this contract. This includes, to the extent such detail will properly reflect, all costs: direct and indirect costs of labor, material, equipment, supplies, and services and all other costs and expenses of whatever nature for which reimbursement is claimed under provisions of this contract.

15.2 The Contractor shall furnish annually to the Contract Administrator appointed by the City, within one week of filing same, a copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations) pertaining specifically to concession income.

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16.0 ASSIGNMENT-DELEGATION

This contract shall be binding upon the parties. Since ownership of either permanent or temporary concessions is vested in the City and no property rights are conveyed through the award of a concession, the privilege of operating a concession may not be transferred or leased unilaterally by the Contractor. In the event that the Contractor desires to cease operating and sell his investment in fixed improvements and/or inventory, the City will issue a request for proposal for a new Contractor. Upon selection, the new Contractor may then negotiate with the original Contractor to determine a price for assumption of existing improvements and inventory. The City will act as arbitrator in those instances where a price cannot be agreed upon. In the case of the death of the Contractor, this contract shall terminate.

17.0 NOTICES

All notices under this contract shall be by registered mail. Effective date of such notice shall begin three (3) days after date of posting with the United States Postal Service.

18.0 LIMITATION

Services to be performed under this contract may be subject to approval by the Austin City Council and City Manager, if applicable.

19.0 CONFLICT OF INTEREST

Interest of all parties concerned: No officer, employee, or agent either elected or otherwise, of the City or of the Contractor or any other party who exercises any function or responsibility in connection with the planning or carrying out of any agreement shall have any personal financial interest, direct or indirect, in this contract, or receive any benefits accruing therefrom, other than regular employment or fee as agreed upon herein, nor shall any other person wherever connected, who has, or exercises any function or responsibility in connection with the Agreement have any personal financial interest, direct or indirect, in the contract or receive any benefits other than that accruing from compliance with this Agreement.

20.0 SEVERABILITY OF PROVISIONS

If any provision(s) of this contract is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties.

21.0 SUSPENSION

Should the Contractor fail to timely and properly perform each of the terms and conditions provided herein, the City may suspend funding for such periods as are necessary to effect compliance.

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22.0 VENUE

Both parties agree that venue for any litigation arising from this contract shall lie in Austin, Travis County, Texas.

23.0 CHANGES IN THE CONTRACT

Any substantive change(s) to this contract shall be in writing in the form of an amendment mutually agreed upon and duly executed by both parties.

24.0 CONTRACT ADMINISTRATOR

Mr. Rick Fuszek, Management Services Division, Parks and Recreation Department, 200 South Lamar, Austin, Texas 78704, telephone (512) 499-6723, will act as the contact point between the City and the Contractor and is designated the Contract Administrator. The Contract Administrator shall be authorized to act on behalf of the City to organize, schedule, coordinate work processes and review and approve work projects for this project. The Contract Administrator shall make every effort to resolve questions, expedite decisions and facilitate the review of work performed in a timely fashion. The City reserves the right to change the Contract Administrator at any time but must give immediate notice of such change to the Contractor, said notice will be made pursuant to Paragraph 17.0, NOTICES, herein.

25.0 EQUAL OPPORTUNITY

25.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that employees are treated without regard to their race, color, religion, sex, or national origin.

25.2 In the event the Contractor does not comply with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further contracts with the City of Austin.

26.0 LEGAL RELATIONSHIPS

It is understood and hereby agreed by the Parties that the Contractor is, and shall be, an independent contractor hereunder and shall control all ways, means and details incident to the performance of himself and his agents and employees under this contract. Neither the Contractor nor his agents or employees shall be considered employees of the City of Austin, shall not be subject to the personnel policies of the City, nor participate in the benefits which accrue to City employees. Contractor further agrees to indemnify and hold harmless the City from any and all claims or losses which may result from negligence or misconduct on the part of the Contractor, his agents, employees, or representatives, and Contractor shall hold the City harmless from any claims, losses, or damages resulting therefrom.

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27.0 LIABILITY OF MONIES

The Contractor shall be liable in full for all funds collected, paid to, or found otherwise in the Contractor's possession, until such time as the funds are physically transferred over to and accepted by the City. The Contractor is responsible to provide same to the City.

28.0 MAINTENANCE OF RECORDS

All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of a project, whichever occurs first; except that records will be retained beyond the third year if an audit is in progress and/or the findings of a completed audit have not been resolved satisfactorily.

29.0 PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience and reference and are not intended to define, extend, or limit any provision in the contract.

30.0 CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

31.0 NOTICE OF ANTI-APARTHEID ORDINANCE CITY OF AUSTIN ORDINANCE NO. 860904-S

The City of Austin (City) in accordance with its responsibilities as an equal opportunity employer to ensure that the City transacts its business with other equal opportunity employers has passed the above-captioned ordinance prohibiting contracting for the purchase of products, goods and services originating in South Africa or Namibia or from contractors who render professional services to South Africa or Namibia. Certain exceptions are noted in the ordinance and contractor is under an affirmative duty to notify City of its inability to conform with the ordinance so that an appropriate determination may be made by the City.

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CAROUSEL CONCESSION AT
BARTON SPRINGS, ZILKER PARK

SECTION II

SCOPE OF SERVICES
SPECIAL CONTRACT PROVISIONS

GENERAL DUTIES

1.0 PRIVILEGES

In consideration of the rental to be paid by Contractor and the covenants, conditions, and duties to be kept and performed by the Contractor, the City hereby grants to the Contractor the following and exclusive privileges at 2201 Barton Springs Road, hereinafter sometimes called the "contract premises", in the City of Austin, Travis County, Texas:

- 1.1 The Contractor shall provide in the designated area of the concession at the contract premises a quality carousel operation with emphasis on overall esthetic appeal and compatibility with existing park uses, subject to the limitations and conditions hereinafter stated.
- 1.2 The Contractor shall provide all staff in adequate number to serve the public at the contract premises, subject to the limitations and conditions hereinafter stated.
- 1.3 The Contractor shall provide all equipment necessary to the operation of the concession at the contract premises, subject to the limitations and conditions hereinafter stated.
- 1.4 The Contractor shall provide complete maintenance services for the carousel and auxillary structures.
- 1.5 Ticket prices, including price changes, the rules of ridership, and all other relations, and all other relations of the concessionaire with the public, shall be subject to the approval of the Director of Parks and Recreation.

2.0 RENTAL

In consideration of the grant herein, Contractor hereby promises to pay to the City without demand, at the office of the Director of the Parks and Recreation Department of the City of Austin, Travis County, Texas the following amounts as rent:

- 2.1 The amount shown on the Pricing Sheet, a percentage of all annual gross sales or a "guaranteed" minimum. The annual period for computing gross sales shall begin on the effective date of the

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contract. The term "annual gross sales" as used in this contract shall be defined as all income of whatever nature received by or accruing to Contractor, arising from the operation of the concession, and for services performed under this contract by the Contractor including, but not limited to, ticket sales and the sale of all appropriate related items, such as souvenir items, and other items as desired if specific written approval is obtained from the Director of Parks and Recreation. The term "gross sales" as used in this contract means total receipts before the deduction of any costs or expenses whatsoever; provided, however, that gross sales shall exclude any sales taxes.

- 2.2 Ticket Sales: Serially-numbered tickets for rides will be printed at the expense of the Contractor and placed on deposit with the Management Services Division of the Parks and Recreation Department to be issued to the Contractor upon payment of the agreed upon percentage, shown on the Pricing Sheet, of the face value of the tickets. No other tickets will be used, nor may the issued tickets be re-used at any time, and used tickets will be destroyed. In the event refunds are necessary, Contractor will have each rider sign a refund receipt to be presented to the Parks and Recreation Department for redemption in the form of new tickets.
- 2.3 Souvenirs and other Sale Items: Based upon the agreed percentage shown on the pricing sheet, said amount will be payable on or before the 10th of the month immediately following the month in which sales are made or services performed. Payments made after the 10th will be subject to a late payment charge of twenty-five dollars (\$25) per day for every day overdue.
- 2.4 By mutual written agreement, the percentage paid to the City may be adjusted by the Director of the Parks and Recreation Department. This adjustment will not affect the other terms and conditions of this Agreement. An adjustment, if any, can be made only after the first anniversary date of contract.

3.0 PERSONNEL

- 3.1 The Contractor shall hire at his own cost and expense, train, and supervise a staff of employees to assist him in the performance of this contract. The Contractor shall employ a number of people which, in the opinion of the Director of Parks and Recreation, is sufficient to meet the demands of the public at the contract premises. This staff shall be uniformed in a manner consistent with a quality operation of this type and acceptable to the City. Staff shall wear name tags at all times when on duty.
- 3.2 The Contractor shall endeavor to employ only persons who in appearance, manner, and character, will reflect credit on the City and will be acceptable to the park patrons. It is agreed by the parties that the City shall retain the right to order the Contractor to dismiss any employee who, in the opinion of the Director of the Parks and Recreation Department, is unacceptable for

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employment at the contract premises. The Contractor shall submit with his proposal a staffing plan that includes the number of employees and approximate schedules.

4.0 STRUCTURAL CHANGES

Beyond the construction plan proposed by The Contractor and approved by the City, the Contractor shall not make any further structural alterations, repairs, or improvements of the premises, without written permission from the Director of the Parks and Recreation Department. Any such alterations made without permission shall be done at the expense of the Contractor and shall become the property of the City at the termination of this Agreement or the City shall require the Contractor to restore the property to its original condition at the Contractor's expense. The Contractor shall make written report to the Director of the Parks and Recreation Department of any needed repairs or suggested alteration or improvements.

5.0 REVERSION

All permanent concession facilities including any structural improvements will revert to the possession of the City at the end of the term of the concession contract.

6.0 UTILITIES

The Contractor shall pay for the electrical utilities associated with the operation of the carousel on the contract premises. A separate electric meter shall be required for the Contractor's use. The Contractor shall provide local telephone service for his use on the contract premises. The Contractor shall pay for all local telephone service, long distance telephone service and advertising.

7.0 CITY OPERATION OF CONTRACT PREMISES

The City reserves the right to take over and operate the carousel concession at Barton Springs, Zilker Park, using the equipment of the Contractor, at any time at the contract premises during which Contractor or his agent is unable to perform under this Agreement as a result of his death, total incapacity, court order, bankruptcy, or inability to perform for any reason. Should City operation become necessary, the Director of the Parks and Recreation Department shall, when practicable, give the Contractor notice of such intention to operate this concession by mailing notice of intention to Contractor at his last known address by regular United States Mail. The City shall render an account to Contractor of all business done during such City operation and shall be entitled to deduct from the gross sales at such event of performance, all costs incurred by the City as a result of such operation. The gross sales during City operation shall be included in a calculation of annual gross sales to be reported to the City by the Contractor as provided for elsewhere in this Agreement.

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CAROUSEL CONCESSION AT
BARTON SPRINGS, ZILKER PARK

SECTION III

SCOPE OF SERVICES
SPECIAL CONTRACT PROVISIONS

SPECIFIC DUTIES

1.0 SPECIFIC DUTIES

In consideration of the rights and privileges granted herein by the City to the Contractor, the Contractor agrees and binds himself to perform the following duties in a competent manner:

- 1.1 The Contractor shall provide in the designated area of the contract premises a quality carousel concession operation with emphasis on its overall esthetic appeal and compatibility with existing park uses, subject to the limitations and conditions hereinafter stated.
- 1.2 The Contractor shall furnish and operate a traditional carousel concession including staffing, management, ancillary souvenir sales, and any other function normal and consistent with an operation of this type.
- 1.3 The Contractor shall provide all staff in adequate number to serve the public and to comply with the terms of this RFP.
- 1.4 The Contractor shall provide all equipment necessary to the operation of this concession. This equipment shall include an adequate number of waste containers as specified by the Parks and Recreation Department for the eating area, including separate containers for re-cyclable materials. All submitted examples for waste containers must be acceptable to the City.
- 1.5 The Contractor shall provide and keep in full force and effect insurance written by an insurance company authorized to do business in the State of Texas (q.v. Section, Paragraph 10.0).
- 1.6 The Contractor shall perform all normal duties associated with an operation of this type and will keep the improvements and equipment in good repair at their own expense and will perform necessary maintenance to keep same in a safe operating condition. The Contractor will always remember that this is a service establishment and that they not only represent themselves but the City and as such will serve everyone cheerfully, fairly, and promptly.

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- 1.7 The Contractor shall make payment to the City each month the percentage of gross sales agreed to by both parties. The Contractor shall furnish the Director of Parks and Recreation Department of copy of the Federal Income Tax Return for this business within one (1) week of filing the same.
- 1.8 The Contractor shall provide and place in a conspicuous place a list of prices of tickets and all other items offered for sale, including hours of operation and a Parks and Recreation phone number for information or complaints. The design and location of posting shall be subject to the approval of the Director of the Parks and Recreation Department or his designee.
- 1.9 The Contractor's prices submitted with the RFP shall not be changed for a minimum of ninety (90) days. After the ninety (90) days, the Parks and Recreation Department must be notified of any proposed changes in prices or items sold which must be approved by the Director.
- 1.10 The Contractor shall provide a pricing sheet with the proposal to include the percentage of gross sales and/or guaranteed minimum the Contractor is willing to pay to the City monthly for the privilege of operating this concession.
- 1.11 The rights under this proposal are not transferable.
- 1.12 The Contractor agrees that minimum hours of operation shall normally be 11:00 AM to dusk, seven days a week, except during periods of inclement weather. These hours are subject to change at the discretion of the Director of Parks and Recreation Department or his designee. The Contractor also agrees to adjust the hours of operation upon the Director's request to meet specific needs of park visitors.
- 1.15 A locked "Suggestion Box", built to City specifications shall be installed at the concession to receive citizen's comments on a form to be supplied by the City.

2.0 RECORD OF ACCOUNTS

Contractor shall establish and maintain during the term of this agreement separate records and accounts, including a separate bank account, relating to the operation of the concession at Barton Springs, Zilker Park, and which records and accounts shall be subject to examination and audit by the City at any time.

3.0 MANNER OF OPERATION

The following conditions shall be in effect as to the concession rights:

- 3.1 Contractor shall conduct his business in a manner that is efficient and orderly and which will reflect credit upon both himself and the City. The Contractor shall perform as follows:

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- 3.1.1 Permit no advertising at or on the building other than Contractor's business signs nor permit any defacing of the building or buildings where his physical facilities are located.
- 3.1.2 Permit no undue loitering.
- 3.1.3 Permit no objectionable language.
- 3.1.4 Comply with all city, County, State, and Federal regulations and laws pertaining to the operation of the concession.
- 3.1.5 The area in and around the carousel shall be kept free and clear from rubbish, filth, and refuse, and Contractor must employ necessary personnel to place regularly such rubbish and refuse in large garbage containers which when full shall be closed with securely fitting lids and placed by Contractor at a location to be designated by the Director of the Parks and Recreation Department, all at the cost and expense of the Contractor.

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**WOODEN ROWBOAT RENTALS
AT DRY CREEK ON TOWN LAKE**

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SCOPE OF WORK AND PROPOSAL REQUIREMENTS

1.0 PURPOSE

The City of Austin Parks and Recreation Department is pleased to invite proposals from qualified individuals or organizations for development and operation of a traditional wooden rowboat rental concession at the mouth of Dry Creek on the south shore of Town Lake.

2.0 SCOPE OF WORK

2.1 Objective

The City's objective is to enter into a contract with a qualified and experienced individual or company, hereafter referred to as the Contractor, to provide a quality rowboat rental concession operation which will enhance recreational access and utilization of Town Lake. The boats shall be of traditional appearance such as lapstreak or strip planked and constructed of wood. The City seeks proposals which include provisions for minimizing any negative environmental impacts associated with such an operation. The following tasks and provisions represent a summary of the City's requirements of the successful bidder.

TASKS AND PROVISIONS

- The Contractor must demonstrate expertise and competence in construction, operation and maintenance of a rowboat rental concession and a knowledge of accepted standards of the industry.
- The Contractor must outline the experience and qualifications he, she, or the firm possesses which demonstrates an ability to effectively provide an original rowboat rental concession of top quality using traditional woods and techniques.
- The Contractor shall conform to the Scope of Services, General Duties as outlined in Section II, Special Contract Provisions.
- The Contractor shall conform to the Scope of Services, Specific Duties as outlined in Section III, Special Contract Provisions.
- The Contractor shall pay to the City monthly for the privilege of operating this concession either a percentage of gross sales or a guaranteed minimum amount.

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2.2 Implementation

The Contractor shall furnish and operate a rowboat rental concession including staffing, maintenance, ancillary souvenir sales, and any other function normal and consistent with an operation of this type during the hours of normal park operation.

2.3 Acceptance of Work

All performance and services under this contract must be of high standard and quality and must conform to good trade practices and services shall be rendered efficiently as prescribed by this document. All plans for structures, docks, or other site improvements will require approval of the Director of Parks and Recreation. Exclusive right to provide a service or product on City parkland is not implied or guaranteed in any concession contract.

2.3.1 Contractor shall establish and maintain during the term of agreement separate records and accounts, including a separate bank account, relating to the operation of the rowboat rental concession on Town Lake, and which records and accounts shall be subject to examination and audit by the City at any time.

2.3.2 Contractor shall pay to the City monthly without demand, at the office of the Director of the Parks and Recreation department of the City of Austin, the amount of rent shown on the pricing sheet of all annual gross sales or a guaranteed minimum amount. The minimum percentage of gross sales which the City will consider for permanent concession facilities is ten percent (10%).

2.3.3 Contractor shall hire at his own cost and expense, train and supervise a staff of employees whose appearance, manner, and character will reflect credit on the City and will be acceptable to the patrons of the concession, to assist him in the performance of this contract.

2.3.4 Contractor shall implement all construction plans at the Contractor's expense once they are approved by the City.

2.3.5 Contractor shall provide all equipment necessary to the operation of this concession at the contract premises including waste containers.

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3.0 PROPOSAL FORMAT

Prefacing the proposal, the offeror shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. The proposal itself shall be organized in the following format and informational sequence:

- 3.1 Part I-Business Organization: State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- 3.2 Part II-System Concept and Solution: Define in detail your understanding of the objective presented in Paragraph 2.0 Scope of Work of this request for proposal and your system solution. Provide all details as required in Paragraph 2.0 Scope of Work in addition to those facts you deem necessary to evaluate your proposal.
- 3.3 Part III-Program: Describe your concession program, construction proposal and operational design, including the adjacent outdoor area for waiting riders, and any plans for implementation. The construction proposal should be a conceptual design describing structures, docks, and other site modifications in general terms. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Statement of Work and your plan for accomplishment. Specifically indicate:
 - a. Scope of Service- A fully detailed description of the services to be provided.
 - b. Length of Contract- Indicate the minimum contract terms you feel are appropriate for the services proposed and why.
 - c. Record of Service- Provide details of your experience demonstrating your ability to successfully provide the service proposed.
 - d. Marketing Plan- Discuss marketing strategies to include, but not limited to: Exterior Signage, Target Markets, Publicity, etc.
- 3.4 Part IV-Project Management Structure: Provide a general explanation and chart which specifies management responsibilities. **NOTICE OF NO INTENT TO SUBCONTRACT: IF OFFEROR DOES NOT INTEND TO SUBCONTRACT ANY WORK UNDER THIS CONTRACT, OFFER MUST AFFIRMATIVELY SO STATE ON "SUBCONTRACT DISCLOSURE FORM" IN THE MINORITY BUSINESS PARTICIPATION PACKET ATTACHED HERETO.**

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- 3.5 Part V-Prior Experience: Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 1980. Supply references, who can verify the quality of the services provided, including name, title, present address, and phone number.
- 3.6 Part VI-Personnel: Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to this person and the percentage of time each person will devote to this work. Identify persons by name and title. Provide all resumes.
- 3.7 Part VII-Authorized Negotiator: Include name, address, and telephone number of person in your organization authorized to negotiate contract terms and render binding decisions on contract matters.
- 3.8 Part VIII-Cost Proposal: Information described in following subsections is required from each offeror.
- a. Provide a detailed cost breakdown of your anticipated investment and annual gross revenue. This should include only those costs directly related to equipment.
 - b. Itemize all equipment necessary for the operation of the concession not provided by the City.
 - c. Provide a pricing sheet to include the percentage of gross sales, less sales tax and the estimated dollar amount that the Contractor proposes to pay the City of Austin and/or a minimum guaranteed amount, as consideration of the rights and privileges granted herein.

4.0 COMPETITIVE SELECTION

This procurement will comply with applicable City of Austin Policy. The successful Contractor will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph 5.0 below shall be applied to all eligible, responsive Contractors in comparing proposals and selecting the successful offeror. Award of a contract may be made without discussion with Contractors after proposals are received. Proposals should, therefore, be submitted on the most favorable terms. At the option of the City, interviews may be held with respondents as part of the evaluation process.

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5.0 PROPOSAL EVALUATION FACTORS

The evaluation criteria will have the following rank of importance. The items are listed in descending order of importance, with item a. being the most important and item g. being the least important.

- a. System Concept and Solutions Proposed (Grasp of overall concession operation and how proposed service meets City objectives, responsiveness to terms and conditions, completeness and thoroughness of the data and documentation.)
- b. Demonstrated Applicable Experience
- c. Revenue to the City
- d. Evidence of Good Organization and Management Practices
- e. Personnel Qualifications
- f. Schedule
- g. MBE/WBE Participation - Prime or subcontractors.

6.0 COST INCURRED IN RESPONDING

All cost directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of and shall be borne by Offeror(s).

7.0 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be conducted on _____, 1992 at 10:00 a.m. at the Parks and Recreation Main Office, 200 South Lamar, Austin, Texas 78704.

8.0 FINANCIAL REPORTS

The Contractor shall submit monthly financial reports on a form to be supplied by the City to the Contract Administrator appointed by the City and to the Parks and Recreation Accounting Section.

9.0 PROPOSAL ACCEPTANCE PERIOD

All proposals must include a statement that they are valid for a minimum period of ninety (90) days subsequent to the RFP closing date.

10.0 CONTRACT INCORPORATION

Contractor should be aware that the contents of the successful proposal will become a part of the subsequent contractual documents. Failure of Contractor to accept this obligation may result in the cancellation of any award. Any damages occurring to the City as a result of the Contractor's failure to contract may be recovered from the Contractor.

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11.0 NEGOTIATIONS

11.1 The City reserves the right to negotiate all elements which comprise the Contractor's proposal to ensure that the best possible consideration be afforded to all concerned.

11.2 The City reserves the right to reject any and all proposals and to resolicit for proposals in such an event.

12.0 CONTRACT COMPLIANCE STATEMENT

Offeror shall state his compliance with all applicable rules and regulations of Federal, State and Local governing entities. Offeror must state his compliance with terms of this Request for Proposal.

13.0 RELEASE OF INFORMATION

Submission of information relative to this RFP shall not be released by the City during the proposal evaluation process or prior to contract award.

14.0 PROPRIETARY INFORMATION

If an offeror does not desire proprietary information in the proposal to be disclosed, he is required to identify all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If the offeror fails to identify proprietary information, he agrees that by submission of his proposal that those sections shall be deemed non-proprietary and made available upon public request.

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WOODEN ROWBOAT RENTALS
AT DRY CREEK ON TOWN LAKE

SECTION I

STANDARD CONTRACT PROVISIONS

1.0 SCOPE OF WORK AND SPECIAL CONTRACT PROVISIONS

The Contractor shall conform to the Scope of Work and Special Contract Provisions and the Contractor's proposal as submitted. However, in the event any conflict should arise between the Contractor's proposal and this contract, the latter shall govern.

2.0 TERM OF AGREEMENT

- 2.1 Based upon the Contractor's proposed investment in renovation of the concession facility, this Agreement shall be in effect for a period of _____ years (~~maximum~~ of five years) from the date of its commencement, that being on or about _____, 1992.
- 2.2 Subject Agreement may, however, be extended for up to _____ year periods (~~maximum~~ of three renewable options of five years each) subject to the approval of the Contractor and the City Manager or his designee.
- 2.3 Upon expiration of the initial term or period of extension, Contractor agrees to hold over under the terms and conditions of this Agreement for such period of time as is reasonably necessary to resolicit, provided such period shall not exceed one hundred and eighty (180) days.

3.0 TERMINATION AND REMEDIES. CANCELLATION

- 3.1 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event a demand is made, and no assurance is given within thirty (30) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
- 3.2 A party may terminate this Agreement if the other fails to cure a material breach which substantially impairs the value of the contract as a whole to the non-breaching party within thirty (30) days of receipt of written notice being given by the other party. If more than thirty (30) days are required to cure such default or breach, a reasonable time in excess of said days may be established, provided both parties agree in writing as to the time period to be substituted. In the event such default or breach is not cured within a specified time, the Contract may be terminated upon thirty (30) days written notification.

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- 3.3 In lieu of termination, the City reserves the right to assess a payment of twenty-five dollars (\$25) per day for each day that a material breach remains uncured past the thirty (30) days after notification by the City.
- 3.4 It is further understood and agreed that the failure of the Contractor to comply with any and/or all of the terms herein shall authorize the City, or its agent, at the City's option, to cancel this Agreement and repossess the premises described herein, and in the event legal action is undertaken by the City to collect rents due hereunder, to collect damages growing out of or arising from this Agreement, or to in any way enforce the provisions of the Agreement, the Contractor shall be obligated to the City in an amount of ten percent (10%) of such recovery as expenses of such legal action, which ten percent (10%) shall be in addition to court costs.
- 3.5 Upon termination, whether by uncured default, breach or in accordance with the force majeure clause herein, the minimum remedies of each of the parties is as follows: Contractor shall provide the City with documentation as to costs; and the City shall pay the Contractor for all such cost incurred to the date of termination at the standard rates specified in this Agreement, provided that the City has received reasonable value from the service performed.
- 3.6 The City may cancel for convenience this Agreement upon thirty (30) days written notice to the Contractor should the City of Austin cease to operate the facility or the facility no longer function as a concession. Effective date of such notice shall begin three (3) days after date of posting with the United States Postal Service with said notice being sent to last known address of Contractor.

4.0 SCOPE OF SERVICES/GENERAL DUTIES

The Contractor shall conform to the scope of services, GENERAL DUTIES, as found in Section II herein.

5.0 SCOPE OF SERVICES/SPECIFIC DUTIES

The Contractor shall conform to the scope of services, SPECIFIC DUTIES, as found in Section III herein.

6.0 NEGOTIATIONS

The City reserves the right to have any additional terms and conditions incorporated into the Agreement provided an authorized modification to the contract is mutually agreed upon and duly executed by both parties.

7.0 RELEASE OF PREMISES AND PHYSICAL DAMAGES TO SAME

Contractor shall quit and surrender premises described herein, including any fixed improvements, at the expiration of the term of this Agreement

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in as good a condition as normal wear and tear elements of the weather thereof will permit. Contractor further authorizes City, or its agent, to re-enter and take possession of said premises if the same became vacant during the term of this Agreement.

8.0 FORCE MAJEURE

Neither party shall be held responsible for losses resulting if the fulfillment of any terms or provisions of this contract are delayed or prevented by any cause not within the control of the party whose performance is interfered with and which said party is unable to prevent by the exercise of reasonable diligence. In addition, no compensation will be given by the City for any loss incurred as a result of vandalism or due to special events in Town Lake Park approved by the Director of Parks and Recreation.

9.0 GRATUITIES

The City may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the performing of this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

10.0 INSURANCE

The Contractor shall carry insurance in the following types and amounts for the duration of this contract and furnish Certificates of Insurance as evidence thereof:

10.1 Statutory Workmen's Compensation

10.2 Comprehensive General Liability Insurance with minimum Bodily Injury combined single limit of \$500,000 for each occurrence and Property Damage limits of \$250,000 for each occurrence to include Premises - Operations, Broad Form Property Damage, Personal Injury and Contractual Liability coverage.

10.3 Automobile Liability Insurance for all owned, non-owned, and hired vehicles with limits for Bodily Injury of \$250,000 for each person and \$500,000 for each occurrence and Property Damage limits of \$250,000 for each occurrence.

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If the insurance policies are not written for the amount specified in 10.2 and 10.3 above, the Contractor is required to carry an Excess Liability insurance policy for any difference in the amounts specified. The Contractor shall be responsible for any deductible amounts stated in the policies.

The Contractor shall not commence work under this contract until he has obtained all required insurance and until such insurance has been reviewed by the City of Austin Purchasing Office.

The required insurance must be written by a company licensed to do business in the State of Texas at the time the policy is issued. In addition, the company must be acceptable to the City and all insurance (other than Workmen's Compensation) shall be endorsed to include the City as an additional insured thereunder.

The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled or reduced, restricted, or limited until 45 days after the City has received written notice as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the operations to which the insurance applies, the expiration date and the above-mentioned notice of cancellation clause.

The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, for the claims history of the industry as well as the Contractor.

11.0 INDEMNITY

Contractor shall save the City free and harmless from all claims or liability for damages to any person or persons for injuries to person or personal injuries resulting in the death of any person or loss or damage to property occasioned by or in connection with the Contractor's exercise of the rights and privileges hereby granted. Contractor hereby assumes full responsibility for the character, acts and conduct of all persons employed by Contractor.

12.0 Contractor CERTIFICATION

The Contractor certifies that the fees in this Agreement have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor. The Contractor also certifies that his firm complies with the requirements of City of Austin Ordinance No. 720615-A, Non-Discriminatory Employment Requirements, adopted June 15, 1972.

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13.0 CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the City (within two (2) working days after being notified) of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the Legal Department and the affected City Department, PO Box 1088, Austin, Texas 78767.

14.0 LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

14.1 The Contractor shall at all times observe and comply with all Federal and State laws and City ordinances and regulations which, in any manner, affect the operation of this concession and shall observe and comply with all orders, laws, ordinances, and regulations which may be enacted by a legislative body having jurisdiction or authority over such concession.

14.2 The Contractor further agrees to procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful operation of this concession. All taxes imposed on the operation of this business or the property used in this business owned by the Contractor, imposed by Federal State, or governmental agency, shall be paid when due by the Contractor.

15.0 AUDITING REQUIREMENTS

15.1 It is agreed that Contractor shall maintain and make available for inspection, audit and/or reproduction by any authorized representative of the City or any other governmental agency, books, documents, and other evidence pertinent to the costs and expenses of this contract. This includes, to the extent such detail will properly reflect, all costs: direct and indirect costs of labor, material, equipment, supplies, and services and all other costs and expenses of whatever nature for which reimbursement is claimed under provisions of this contract.

15.2 The Contractor shall furnish annually to the Contract Administrator appointed by the City, within one week of filing same, a copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations) pertaining specifically to concession income.

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16.0 ASSIGNMENT-DELEGATION

This contract shall be binding upon the parties. Since ownership of either permanent or temporary concessions is vested in the City and no property rights are conveyed through the award of a concession, the privilege of operating a concession may not be transferred or leased unilaterally by the Contractor. In the event that the Contractor desires to cease operating and sell his investment in fixed improvements and/or inventory, the City will issue a request for proposal for a new Contractor. Upon selection, the new Contractor may then negotiate with the original Contractor to determine a price for assumption of existing improvements and inventory. The City will act as arbitrator in those instances where a price cannot be agreed upon. In the case of the death of the Contractor, this contract shall terminate.

17.0 NOTICES

All notices under this contract shall be by registered mail. Effective date of such notice shall begin three (3) days after date of posting with the United States Postal Service.

18.0 LIMITATION

Services to be performed under this contract may be subject to approval by the Austin City Council and City Manager, if applicable.

19.0 CONFLICT OF INTEREST

Interest of all parties concerned: No officer, employee, or agent either elected or otherwise, of the City or of the Contractor or any other party who exercises any function or responsibility in connection with the planning or carrying out of any agreement shall have any personal financial interest, direct or indirect, in this contract, or receive any benefits accruing therefrom, other than regular employment or fee as agreed upon herein, nor shall any other person wherever connected, who has, or exercises any function or responsibility in connection with the Agreement have any personal financial interest, direct or indirect, in the contract or receive any benefits other than that accruing from compliance with this Agreement.

20.0 SEVERABILITY OF PROVISIONS

If any provision(s) of this contract is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties.

21.0 SUSPENSION

Should the Contractor fail to timely and properly perform each of the terms and conditions provided herein, the City may suspend funding for such periods as are necessary to effect compliance.

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22.0 VENUE

Both parties agree that venue for any litigation arising from this contract shall lie in Austin, Travis County, Texas.

23.0 CHANGES IN THE CONTRACT

Any substantive change(s) to this contract shall be in writing in the form of an amendment mutually agreed upon and duly executed by both parties.

24.0 CONTRACT ADMINISTRATOR

Mr. Rick Fuszek, Management Services Division, Parks and Recreation Department, 200 South Lamar, Austin, Texas 78704, telephone (512) 499-6723, will act as the contact point between the City and the Contractor and is designated the Contract Administrator. The Contract Administrator shall be authorized to act on behalf of the City to organize, schedule, coordinate work processes and review and approve work projects for this project. The Contract Administrator shall make every effort to resolve questions, expedite decisions and facilitate the review of work performed in a timely fashion. The City reserves the right to change the Contract Administrator at any time but must give immediate notice of such change to the Contractor, said notice will be made pursuant to Paragraph 17.0, NOTICES, herein.

25.0 EQUAL OPPORTUNITY

25.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that employees are treated without regard to their race, color, religion, sex, or national origin.

25.2 In the event the Contractor does not comply with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further contracts with the City of Austin.

26.0 LEGAL RELATIONSHIPS

It is understood and hereby agreed by the Parties that the Contractor is, and shall be, an independent contractor hereunder and shall control all ways, means and details incident to the performance of himself and his agents and employees under this contract. Neither the Contractor nor his agents or employees shall be considered employees of the City of Austin, shall not be subject to the personnel policies of the City, nor participate in the benefits which accrue to City employees. Contractor further agrees to indemnify and hold harmless the City from any and all claims or losses which may result from negligence or misconduct on the part of the Contractor, his agents, employees, or representatives, and Contractor shall hold the City harmless from any claims, losses, or damages resulting therefrom.

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27.0 LIABILITY OF MONIES

The Contractor shall be liable in full for all funds collected, paid to, or found otherwise in the Contractor's possession, until such time as the funds are physically transferred over to and accepted by the City. The Contractor is responsible to provide same to the City.

28.0 MAINTENANCE OF RECORDS

All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of a project, whichever occurs first; except that records will be retained beyond the third year if an audit is in progress and/or the findings of a completed audit have not been resolved satisfactorily.

29.0 PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience and reference and are not intended to define, extend, or limit any provision in the contract.

30.0 CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

31.0 NOTICE OF ANTI-APARTHEID ORDINANCE CITY OF AUSTIN ORDINANCE NO. 860904-S

The City of Austin (City) in accordance with its responsibilities as an equal opportunity employer to ensure that the City transacts its business with other equal opportunity employers has passed the above-captioned ordinance prohibiting contracting for the purchase of products, goods and services originating in South Africa or Namibia or from contractors who render professional services to South Africa or Namibia. Certain exceptions are noted in the ordinance and contractor is under an affirmative duty to notify City of its inability to conform with the ordinance so that an appropriate determination may be made by the City.

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WOODEN ROWBOAT RENTALS AT
DRY CREEK ON TOWN LAKE

SECTION II

SCOPE OF SERVICES
SPECIAL CONTRACT PROVISIONS

GENERAL DUTIES

1.0 PRIVILEGES

In consideration of the rental to be paid by Contractor and the covenants, conditions, and duties to be kept and performed by the Contractor, the City hereby grants to the Contractor the following and exclusive privileges on the City-owned south shore of Town Lake, immediately west of and adjacent to Dry creek between Stratford drive and Town lake, hereinafter sometimes called the "contract premises", in the City of Austin, Travis County, Texas:

- 1.1 The Contractor shall provide in the designated area of the concession at the contract premises a quality rowboat rental operation with emphasis on safe recreation, overall esthetic appeal and compatibility with existing park uses, subject to the limitations and conditions hereinafter stated.
- 1.2 The Contractor shall provide all staff in adequate number to serve the public at the contract premises, subject to the limitations and conditions hereinafter stated.
- 1.3 The Contractor shall provide all equipment necessary to the operation of the concession at the contract premises, subject to the limitations and conditions hereinafter stated.
- 1.4 The Contractor shall provide complete maintenance services for the rowboats and auxillary structures and improvements.
- 1.5 Rental prices, including price changes, rowing rules, safety regulations, and all other relations of the concessionaire with the public, shall be subject to the approval of the Director of Parks and Recreation.

2.0 SCHEDULE OF SERVICES

The Contractor may operate the rowboat rental concession from sunrise to one-half hour past sunset daily. Contractor agrees to cease all operation during inclement weather, high flood release or other times which are hazardous to users as determined by the Parks and Recreation staff.

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3.0 RENTAL

In consideration of the grant herein, Contractor hereby promises to pay to the City without demand, at the office of the Director of the Parks and Recreation Department of the City of Austin, Travis County, Texas the following amounts as rent:

- 3.1 The amount shown on the Pricing Sheet, a percentage of all annual gross sales or a "guaranteed" minimum. The annual period for computing gross sales shall begin on the effective date of the contract. The term "annual gross sales" as used in this contract shall be defined as all income of whatever nature received by or accruing to Contractor, arising from the operation of the concession, and for services performed under this contract by the Contractor including, but not limited to, rental fees and the sale of all appropriate related items, such as souvenir items, and other items as desired if specific written approval is obtained from the Director of Parks and Recreation. Additionally, the term "gross sales" as used in this contract means total receipts before the deduction of any costs or expenses whatsoever; provided, however, that gross sales shall exclude any sales taxes.

Said amount will be payable on or before the 10th of the month immediately following the month in which rental sales or made. Payments made after the 10th will be subject to a late payment charge of twenty-five dollars (\$25) per day for every day overdue.

- 3.2 By mutual written agreement, the percentage paid to the City may be adjusted by the Director of the Parks and Recreation Department. This adjustment will not affect the other terms and conditions of this Agreement. An adjustment, if any, can be made only after the first anniversary date of contract.

4.0 PERSONNEL

- 4.1 The Contractor shall hire at his own cost and expense, train, and supervise a staff of employees to assist him in the performance of this contract. The Contractor shall employ a number of people which, in the opinion of the Director of Parks and Recreation, is sufficient to meet the demands of the public at the contract premises. This staff shall be uniformed in a manner consistent with a quality operation of this type and acceptable to the City. Staff shall wear name tags at all times when on duty.
- 4.2 The Contractor shall endeavor to employ only persons who in appearance, manner, and character, will reflect credit on the City and will be acceptable to the park patrons. It is agreed by the parties that the City shall retain the right to order the Contractor to dismiss any employee who, in the opinion of the Director of the Parks and Recreation Department, is unacceptable for employment at the contract premises. The Contractor shall submit with his proposal a staffing plan that includes the number of employees and approximate schedules.

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5.0 STRUCTURAL CHANGES

Beyond the construction plan proposed by The Contractor and approved by the City, the Contractor shall not make any further structural alterations, repairs, or improvements of the premises, without written permission from the Director of the Parks and Recreation Department. Any such alterations made without permission shall be done at the expense of the Contractor and shall become the property of the City at the termination of this Agreement or the City shall require the Contractor to restore the property to its original condition at the Contractor's expense. The Contractor shall make written report to the Director of the Parks and Recreation Department of any needed repairs or suggested alteration or improvements.

6.0 REVERSION

All permanent concession facilities including any structural improvements will revert to the possession of the City at the end of the term of the concession contract.

7.0 UTILITIES

The Contractor shall pay for the electrical utilities associated with the operation of the rowboat rental on the contract premises. A separate electric meter shall be required for the Contractor's use. The Contractor shall provide local telephone service for his use on the contract premises. The Contractor shall pay for all local telephone service, long distance telephone service and advertising.

8.0 CITY OPERATION OF CONTRACT PREMISES

The City reserves the right to take over and operate the rowboat rental concession at Dry Creek, Town Lake Park, using the equipment of the Contractor, at any time at the contract premises during which Contractor or his agent is unable to perform under this Agreement as a result of his death, total incapacity, court order, bankruptcy, or inability to perform for any reason. Should City operation become necessary, the Director of the Parks and Recreation Department shall, when practicable, give the Contractor notice of such intention to operate this concession by mailing notice of intention to Contractor at his last known address by regular United States Mail. The City shall render an account to Contractor of all business done during such City operation and shall be entitled to deduct from the gross sales at such event of performance, all costs incurred by the City as a result of such operation. The gross sales during City operation shall be included in a calculation of annual gross sales to be reported to the City by the Contractor as provided for elsewhere in this Agreement.

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WOODEN ROWBOAT RENTALS AT
DRY CREEK ON TOWN LAKE

SECTION III.

SCOPE OF SERVICES
SPECIAL CONTRACT PROVISIONS

SPECIFIC DUTIES

1.0 SPECIFIC DUTIES

In consideration of the rights and privileges granted herein by the City to the Contractor, the Contractor agrees and binds himself to perform the following duties in a competent manner:

- 1.1 The Contractor shall furnish and operate a traditional rowboat rental concession including staffing, management, instruction, ancillary souvenir sales, and any other function normal and consistent with an operation of this type.
- 1.2 The Contractor shall provide all staff in adequate number to serve the public and to comply with the terms of this RFP.
- 1.3 The Contractor shall provide all equipment necessary to the operation of this concession. This equipment shall include an adequate number of U.S. Coast Guard-approved vest type life jackets for each occupant of every boat rented by the Contractor. Each boat will be required to carry a vest for each occupant when in use. Any person under 12 years of age or under must wear a vest type life preserver.
- 1.4 The Contractor shall provide and keep in full force and effect insurance written by an insurance company authorized to do business in the State of Texas (q.v. Section, Paragraph 10.0).
- 1.5 The Contractor shall perform all normal duties associated with an operation of this type and will keep the rowboats and equipment in good repair at their own expense and will perform necessary maintenance to keep same in a safe operating condition. The Contractor will always remember that this is a service establishment and that they not only represent themselves but the City and as such will serve everyone cheerfully, fairly, and promptly.
- 1.6 The Contractor shall make payment to the City each month the percentage of gross sales agreed to by both parties. The Contractor shall furnish the Director of Parks and Recreation Department of copy of the Federal Income Tax Return for this business within one (1) week of filing the same.

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- 1.7 The Contractor shall provide and place in a conspicuous place a list of prices for boat rentals, instructional classes and all other items offered for sale, including hours of operation and a Parks and Recreation phone number for information or complaints. The design and location of posting shall be subject to the approval of the Director of the Parks and Recreation Department or his designee.
- 1.8 The Contractor's prices submitted with the RFP shall not be changed for a minimum of ninety (90) days. After the ninety (90) days, the Parks and Recreation Department must be notified of any proposed changes in prices or items sold which must be approved by the Director.
- 1.9 The Contractor shall provide a pricing sheet with the proposal to include the percentage of gross sales and/or guaranteed minimum the Contractor is willing to pay to the City monthly for the privilege of operating this concession.
- 1.10 The rights under this proposal are not transferable.
- 1.11 The Contractor agrees that minimum hours of operation shall normally be sunrise to one-half hour past sunset, seven days a week, except during periods of inclement weather. These hours are subject to change at the discretion of the Director of Parks and Recreation Department or his designee). The Contractor also agrees to adjust the hours of operation upon the Director's request to meet specific needs of park visitors.
- 1.12 A locked "Suggestion Box", built to City specifications shall be installed at the concession to receive citizen's comments on a form to be supplied by the City.

2.0 RECORD OF ACCOUNTS

Contractor shall establish and maintain during the term of this agreement separate records and accounts, including a separate bank account, relating to the operation of the concession at Barton Springs, Zilker Park, and which records and accounts shall be subject to examination and audit by the City at any time.

3.0 MANNER OF OPERATION

The following conditions shall be in effect as to the concession rights:

- 3.1 Contractor shall conduct his business in a manner that is efficient and orderly and which will reflect credit upon both himself and the City. The Contractor shall perform as follows:

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- 3.1.1 Permit no advertising at or on the building other than Contractor's business signs nor permit any defacing of the building or buildings where his physical facilities are located.
- 3.1.2 Permit no undue loitering.
- 3.1.3 Permit no objectionable language.
- 3.1.4 Comply with all City, County, State, and Federal regulations and laws pertaining to the operation of the concession, including but not limited to the Texas Water Safety Act.
- 3.1.5 The area in and around the rowboat rental shall be kept free and clear from rubbish, filth, and refuse, and Contractor must employ necessary personnel to place regularly such rubbish and refuse in large garbage containers which when full shall be closed with securely fitting lids and placed by Contractor at a location to be designated by the Director of the Parks and Recreation Department, all at the cost and expense of the Contractor.
- 3.1.6 Contractor shall limit the number of persons allowed in a boat in accordance with Manufacturer's recommendations which shall be provided by Contractor to the City and made a part hereof. Contractor shall not permit any person 12 years old or younger to operate a boat.
- 3.1.7 Contractor shall be permitted the use of one boat not to exceed 16 feet in length and with a motor not to exceed 15 horsepower for emergency boat recovery and rescue operations only.

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MEMORANDUM

TO: Parks and Recreation Board

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 17, 1992

SUBJECT: Construction of covered two-slip boat dock, at 4202 Waters Edge Cove
File # SP-92-0009DS

A request has been received from Signor Enterprises, on behalf of Ron Gordy, to construct a covered two-slip boat dock at 4202 Waters Edge Cove.

This boat dock is located on a lot within the Waters Edge Subdivision, and is the last lot that will require a recessed dock to be constructed (see attached letter from the applicant). As members will recall this lot was discussed during the Board meeting held in November 1991 when approval was given to construct a boat dock on the adjacent lot belonging to Homer Owens.

The width of the shoreline of the lot is 100', the code would allow development of 20% of the length of the shoreline to be developed $100' \times 20\% = 20'$. A variance has been requested to develop 23'-6" of the shoreline, 3'-6" in excess of the 20' permitted. The additional width is proposed to allow for the brick piers supporting the roof to be constructed.

The majority of residential lots fronting onto Lake Austin are 100' wide and many have boat docks that constructed to comply with the 20% development rule, that is boat docks that are 20' wide.

The applicant has submitted a proposal to use CCA treated timber for the construction of the bulkhead. The bulkheads in most of this subdivision were constructed during the early 1980's of treated timber.

Parks and Recreation Board
Boat dock, 4202 Waters Edge Cove
February 17, 1992
Page 2

The Land Development Code was amended in 1989 (on the recommendation of the Parks and Recreation Board) to exclude the use of treated timber for the construction of bulkheads and retaining walls because of concerns over the chemical treatments of the timber leaching into the shallow slow moving water adjacent to the shore where fish are most likely to breed, and more particularly into the drinking water supply of Lake Austin.

In this circumstance, where the bulkhead will be recessed and located within a cove there will very little or no movement of water to flush and dilute any accumulated chemicals.

Recommendation

I recommend refusal of the request for a variance to enable the construction of a covered two-slip boat dock at 4202 Waters Edge Cove to exceed development of 20% of the shoreline because many boat docks along the shoreline of Lake Austin have been constructed at a width of 20' and appear to operate adequately.

I also recommend refusal of the request to construct the bulkhead of treated timber because it is not in accordance with Section 13-2-792(e) of Article VI, Division 4, Part E (Requirements for the Construction Of Boat Docks) of the Land Development Code which requires that retaining walls be constructed of stone, concrete, steel or aluminum.

If I can provide you with any additional information, please contact me.



Manuel A. Mollinedo, Director
Parks and Recreation Department

MM:PM

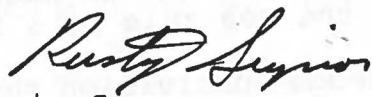
Date: January 6, 1992
To: Director Parks and Recreation Department
From: Signor Enterprises Inc.
Subject: Dock permit, legal address: Lot 33, Section I Watersedge subdivision.

We are requesting approval of our residential boat dock plans at 4202 Watersedge Cove for construction in February 1992.

The slips are to be built from steel pilings.

This additional construction should not adversely affect any shoreline erosion, drainage, or other environmental concerns.

Thank you for your consideration.


Rusty Signor

Date: January 21, 1992
To: Director of Parks and Recreation Department
From: Signor Enterprises, Inc.
Subject: Boatdock at 4202 Waters Edge Cove.

We are requesting a variance to the 20% rule or a different assessment of the particular site situation.

The lot width is 100 feet and we plan to only cut out 20 feet to make two standard nine foot wide slips with a center walk way (for safety) of 2 feet.

However the decorative brick support columns on each side are 1 1/2 feet wide and the walk deck around the dock is 3 feet on each side which have been interpreted as exceeding the 20% rule by 6 feet.

First, this is the last dock in the Watersedge Subdivision that has to be cut entirely into a lot. This was discussed during a November hearing permitting a width variance on the existing slip owned by the adjacent lot owner Homer Owens. All of the other lots in the subdivision were permitted 2 - 9' slips with a safety walkway.

I feel the code that pertains to a slip cut entirely into a lot has been interpreted incorrectly or that it is unreasonable. If we asked to cut in two slips in a 20 foot cut without a covering at all, there would be no question of a variance. The owner could also deck all or part of his land around the cut for a pool or a patio without any variance, yet the deck now is assumed part of the dock structure. The owner could also incorporate the boat dock with his house, garage, or patio structure, decorative columns, etc., which has been done in this particular subdivision and is against no building codes.

Only if the dock protrudes out into the lake should any verticle accoutrements or adjacent walkway be considered in the 20% rule, which is definitely not the case.

Details of the bulkhead construction are included.

Rusty Signor



MEMORANDUM

TO: Parks and Recreation Board

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 19, 1992

SUBJECT: Change deck into boat dock at 2201 Island Wood Road
File # SP-90-0069DS

A request has been received from Rusty Signor, to change an existing deck into a boat slip, at 2201 Island Wood Road.

Construction of the single-slip boat dock with adjacent deck was approved by the Board at their meeting held on May 14, 1990.

This proposal is to change the existing deck into an additional boat slip. The length of shoreline development will not change, nor will the footprint of the dock. No additional structural changes are necessary.

Recommendation

I recommend approval of the request to change an existing deck to a single slip boat dock at 2201 Island Wood Road.

If I can provide you with any additional information, please contact me.

Manuel A. Mollinedo, Director
Parks and Recreation Department

MM:PM

Date: February 10, 1992
To: Director Parks and Recreation Department
From: Signor Enterprises Inc.
Subject: SP-90-0069DS

We are requesting a change to the above boatdock permit site plan.

We would like to increase the width of the dock from 20' to 27'. The shoreline of the property is 136.33 feet wide, so this is less than the 20% maximum allowed.

Also instead of having one slip and a deck area, we would like to change it to two slips.

There are no variances being requested only the changes to the plans.

Thank you for your consideration.

Thank you,


Rusty Signor



MEMORANDUM

TO: Parks and Recreation Board

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 17, 1992

SUBJECT: Construction of two-slip boat dock, at 4301 Michaels Cove.
File # SP-92-0006DS

A request has been received from Signor Enterprises, on behalf of Michael Welwood, to construct a covered two-slip boat dock, at 4301 Michaels Cove.

The proposed boat dock will be located on the upstream side of the Westlake Drive bridge over Isaacs Slough. The siteplan indicates a 20' setback from the adjacent right-of-way line, however a 35' building set back line is required and shown on the siteplan. The boat dock should be entirely outside this 35' building set back line.

Many large trees exist on site that are not indicated on the site development plan, these trees should not be removed and should be protected during construction.

Because of the siltation that has occurred in Isaacs Slough upstream of the bridge it is proposed to dredge some of this material to enable boats to gain access to the boat dock.

The site plan meet the requirements of Article VI, Division 4, Part E (Requirements for the Construction Of Boat Docks) of the Land Development Code (including all amendments).

Recommendation

I recommend approval of the request to construct a covered two-slip boat dock at 4301 Michaels Cove, in accordance with Site Plan #SP-92-0006DS, subject to the following conditions:

1. The boat dock should be located at least 35' from the adjacent right-of-way line to comply with the Building set back requirements.

Parks and Recreation Board
Boat dock, 4301 Michaels Cove
February 17, 1992
Page 2

2. The boat dock should be positioned immediately adjacent to the rock bluff and no part should extend more than 30' from the shoreline.
3. No existing trees should be removed and should be protected during construction.

If I can provide you with any additional information, please contact me.



Manuel A. Mollinedo, Director
Parks and Recreation Department

MM:PM

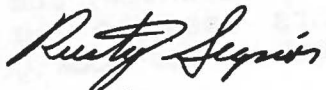
Date: January 6, 1992
To: Director Parks and Recreation Department
From: Signor Enterprises Inc.
Subject: Dock permit, legal address: Lot 1, Block "A" River Cove
Subdivision.

We are requesting approval of our residential boat dock plans at
4301 Michaels Cove for construction in February 1992.

The slips are to be built from steel pilings.

This additional construction should not adversely affect any
shoreline erosion, drainage, or other environmental concerns.

Thank you for your consideration.

A handwritten signature in cursive script, reading "Rusty Signor".

Rusty Signor

Date: January 21, 1992
To: Director of Parks and Recreation Department
From: Signor Enterprises, Inc.
Subject: Boatdock at 4301 Michael's Cove.

The following are the answers to your staff correspondence of 1/16/92.

1) Isaacs Slough is approximately 118 feet wide at the spot where the dock is proposed. As this project is in the extreme inside corner of the slough and the culvert access is at least 16 feet away from the end of a thirty foot dock, we feel this will not impede the navigation in any way. the walls of the slough are verticle rock, so the dock can not be cut into the shore, the shore is so shallow with sedimentation the boats need to berth in somewhat deeper water, and the closer the end of the dock gets to the culvert, the better for access.

2) The lower deck will be 2" x 6" redwood built over CCA joists 1 1/2' above the waterline. The steel pilings will have a brick veneer and steel roof to match the house under construction.

3) We are planning to remove some of the material between the end of the proposed dock to the culvert to enable access to the property. According to a long time resident next door, this material recently washed into the slough after the construction of the Treemont and West View Subdivisions. We contacted the City of Austin Storm and Drainage Department, LCRA, Texas Water Commission, Travis County, and the Army Corp of Engineers for permission. We found out that such a small project is exempt under section 404 of the Clean Water Act and the Corp does not give out permits for this exemption. As this will help the navigation to anyone entering the slough, we feel it will be a win situation for all.

Rusty Signor



MEMORANDUM

TO: Parks and Recreation Board

FROM: Manuel A. Mollinedo, Director
Parks and Recreation Department

DATE: February 17, 1992

SUBJECT: Construction of two-slip boat dock, at 3821 Westlake Drive
File # SP-92-0007DS

A request has been received from Signor Enterprises, on behalf of Dr. Chuck Denham, to construct a two-slip boat dock with deck over at 3821 Westlake Drive.

The legal description of the property is "Lots 99 and 100 Block A, Lakeshore Subdivision, however the lots have NOT been combined into a single tract. The combined length of waterfront is 200.15 feet. Lot 99 has 195.15 feet of frontage and Lot 100 has a 5' wide water easement.

Lot 99 is permitted to develop 20% of the 195.15 feet, 39.03 feet. Lot 100 will not be permitted any shoreline development. The width of the proposed boat dock shown on the site plan is 40', in excess of the 39' permitted.

The City Code permits only two slips for each residential lots, the site plan proposes three, however the applicant has indicated that the third slip will be omitted and a deck constructed in its place. (See attached letter)

With the exception of the items listed above the site plans meeting the requirements of Article VI, Division 4, Part E (Requirements for the Construction Of Boat Docks) of the Land Development Code (including all amendments).

Recommendation

I recommend approval of the request to construct a two-slip dock with deck over at 3821 Westlake Drive, in accordance with Site Plan # SP-92-0007DS subject to the following conditions:

1. The existing wooden boat dock located on Lot 99 be demolished and removed before construction of the new dock is started.

Parks and Recreation Board
Boat dock, 3821 Westlake Drive
February 17, 1992
Page 2

2. Development of the shoreline be restricted to Lot 99.
3. Maximum width of shoreline development is limited to 39 feet.
4. Only two boat slips be constructed in accordance with Section 13-2-794 of the land Development Code.
5. The decorative lighting proposed for the deck be low wattage with diffused white glass.

If I can provide you with any additional information, please contact me.



Manuel A. Mollinedo, Director
Parks and Recreation Department

MM:PM

Date: January 21, 1992
To: Director of Parks and Recreation Department
From: Signor Enterprises, Inc.
Subject: Boatdock at 3821 Westlake Drive.

These answers should meet the demands of the City Land Development Code noted in your correspondence of 1/16/92.

- 1) Lots 99 and 100 Block A have not been combined into one lot. However, lot 99 has 195 L.F. of waterfront enabling the 20% rule to allow a 39 foot wide dock to be built. Lot 100 only has a 5 foot water easement.
- 2) The third adjacent boat slip will be omitted and a deck will be built in its place.
- 3) Both the lower and upper deck will be poured-in-place concrete.
- 4) The decorative lighting on the upper deck will be a low wattage Pagoda type fixture with diffused white glass to prevent visibility impairment with the amber navigation lights.

Rusty Signor

Date: January 7, 1992
To: Director Parks and Recreation Department
From: Signor Enterprises Inc.
Subject: Dock permit, legal address: Lot 99, 100, Block "A"
Lakeshore subdivision.

We are requesting approval of our residential boat dock plans at 3821 Westlake Dr. for construction in February 1992.

The slips are to be built from steel pilings.

The existing deck will be removed.

This additional construction should not adversely affect any shoreline erosion, drainage, or other environmental concerns.

Thank you for your consideration.


Rusty Signor